

# **EXHIBIT A**

**CIVIL CASE INFORMATION STATEMENT**  
**CIVIL CASES**  
 IN THE CIRCUIT COURT OF KANAWHA, WEST VIRGINIA

FILED

2015 MAY 22 PM 4:19

CATHY E. CATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

## I. CASE STYLE:

CENTRAL WEST VIRGINIA REGIONAL  
 AIRPORT AUTHORITY, INC.,  
 a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022  
Judge Kaufman

TRIAD ENGINEERING, INC., 30 Secretary of State  
 a West Virginia corporation;

CAST & BAKER CORPORATION, 30 Secretary of State  
 a Pennsylvania corporation;

MICHAEL BAKER INTERNATIONAL, INC. 30 Secretary of State

a/k/a MICHAEL BAKER CORPORATION,  
 A Delaware corporation

WEST VIRGINIA PAVING, INC., 30 Secretary of State  
 a West Virginia corporation;

SENEX EXPLOSIVES INC., 30 Secretary of State  
 a Pennsylvania corporation;

AFFORDABLE ASPHALT MAINTENANCE  
 CORPORATION, 30 Secretary of State  
 a West Virginia Corporation;

ENGINEERED ARRESTING SYSTEMS  
 CORPORATION, d/b/a ZODIAC 30 Secretary of State  
 ARRESTING SYSTEMS AMERICA,  
 a Delaware Corporation;

ROYAL TEN CATE (USA), INC., 30 Secretary of State  
 a Delaware Corporation;



SCANNED

PYMT Type K  
 Rcpt# 629153 \$200 ☒ \$135  
 Iss. Sum. 68 cc No Sum. Iss  
☒ Ret. to Atty. \$20cm X  
☐ Mailed CM/RM \$5 clk X  
☐ Mailed to sos w/ck#  
☐ Sent to w/ck#

NOVEL GEO – ENVIRONMENTAL, LLC, A Pennsylvania corporation JMD COMPANY, INC. A Delaware corporation.	30	Secretary of State
ARCHITECTS & ENGINEERS INSURANCE COMPANY, A Delaware corporation,	30	Secretary of State
ERIE INSURANCE GROUP, A Pennsylvania corporation,	30	Secretary of State
GREAT AMERICAN INSURANCE COMPANY, An Ohio corporation,	30	Secretary of State
HDI-GERLING AMERICA INSURANCE COMPANY, A Illinois corporation,	30	Secretary of State
LANCER INSURANCE COMPANY, A Delaware corporation,	30	Secretary of State
LIBERTY MUTUAL INSURANCE COMPANY, A Massachusetts corporation,	30	Secretary of State
OHIO FARMERS INSURANCE COMPANY, An Ohio corporation,	30	Secretary of State
WESTFIELD INSURANCE COMPANY, An Ohio corporation,	30	Secretary of State
XL INSURANCE AMERICA, INC., A Delaware corporation,	30	Secretary of State
NEW HAMPSHIRE INSURANCE COMPANY A Pennsylvania corporation,	30	Secretary of State
AIG AEROSPACE INSURANCE SERVICES, INC. A Georgia corporation,	30	Secretary of State
JOHN DOE INSURANCE COMPANY 1,		
JOHN DOE INSURANCE COMPANY 2,		
JOHN DOE INSURANCE COMPANY 3,		
JOHN DOE INSURANCE COMPANY 4-20,		

And JOHN DOES NOS 1 THROUGH 20,

Defendants.

Original and \_\_\_\_\_ copies of Complaint furnished herewith.

PLAINTIFF: CENTRAL WEST VIRGINIA REGIONAL AIRPORT AUTHORITY, INC.,

DEFENDANT: TRIAD ENGINEERING, INC., et al.

---

II. TYPE OF CASE: \_\_\_\_\_


III. JURY DEMAND: YES  
CASE WILL BE READY FOR TRIAL BY: \_\_\_\_\_

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? NO

---

ATTORNEY NAME: Scott S. Segal

Dated: 5/21/15

  
\_\_\_\_\_  
Scott S. Segal (WVSB #4717)  
Samuel A. Hrko (WVSB #7727)  
THE SEGAL LAW FIRM  
810 Kanawha Blvd. East  
Charleston, West Virginia 25301  
Telephone (304) 344-9100

Timothy C. Bailey (WV # 5839)  
Mark A. Barney (WV # 10282)  
BUCCI, BAILEY & JAVINS L.C.  
Post Office Box 3712  
Charleston, West Virginia 25337  
(304) 345-0346

Anthony J. Majestro (WVSB 5165)  
Powell & Majestro PLLC  
405 Capitol Street, Suite P1200  
Charleston, WV 25301  
304-346-2889

Representing Plaintiff

## CASE REASSIGNMENT

This form should be used for the expeditious reassignment of cases pursuant to the new case management system. It should be forwarded to the Chief Judge's Office.

June 15, 2015

Case: 15-C-1022

CENTRAL REGIONAL WV AIRPORT AUTHORITY

v.

TRIAD ENGINEERING, INC.

Requested by: Judge Tod J. Kaufman (TJK)

(Please Check One) Recuse ☒ Retain ☐ Other ☐

Reason: See attached recusal memo.

JCS Approved by Chief Judge

\*\*\*\*\*

### New Assignment

Random Rotation by Circuit Clerk: Webster 6/16/15

(Name of Judge Drawn)

The Clerk is directed to send certified copies of this Case Reassignment to all parties or counsel of record.

1cm: Scott Segal, Esq.  
810 Kanawha Blvd E  
Chas, WV 25301

Timothy Bailey Esq.  
Mark Barney, Esq.  
PO Box 3712  
Chas, WV 25337

Anthony Majestro Esq.  
James Powell Esq.  
405 Capitol St Suite P1200  
Chas, WV 25301

 SCANNED

3

June 16, 2015

15-C-1022

**Recusal Memo to the Chief Judge and File of the Case**

*Re: Central West Virginia Regional Airport v. Triad Engineering, Inc., et al.*

**Context of Conflict**

On Monday morning, April 27, 2015, while driving to work at 8:30 a.m., the undersigned judge was t-boned by a driver who ran the red light at Tennessee and Randolph Street. Soon thereafter, because of the seriousness of the wreck, the undersigned judge retained counsel on or about April 29, 2015.

On May 22, 2015, Yeager Airport filed suit (*Central West Virginia Regional Airport v. Triad Engineering, Inc., et al.*, “Yeager,” Civil Action No. 15-C-1022) against some twenty companies involved with the design and construction of its runway extension project. The undersigned judge was randomly assigned this case on May 22, 2015.

\* \* \* \*

Subsequent to the judge retaining counsel in his own legal matter, his lawyer sometime in May (after the undersigned judge had been assigned the Yeager case) was retained by one of the parties in “Yeager” as an insurance consultant in the “Yeager” case on the insurance and/or bond issues involved. Thus, a conflict, or at least the appearance of a conflict with the judge, has arisen and must be disclosed. The insurance consulting was not known at the time or foreseeable to the judge when he retained counsel.

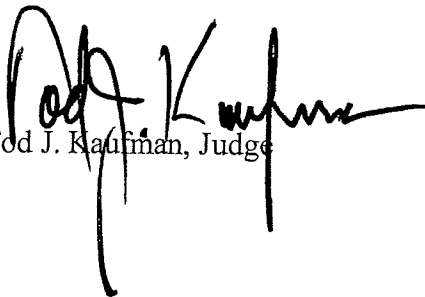
FILED  
2015 JUN 16 PM 4:23  
CLERK  
KANAWHA COUNTY CIRCUIT COURT  
JC

Recusal

The “Yeager case” is and essentially will be an “insurance case”. Further, the Court understands that, in a case of this many defendants and this much at stake to all parties concerned, that cross claims, adding parties and amending the complaint with additional parties could well occur over considerable time. With a motion to recuse coming late in the case always a possibility, the case would be delayed and a new judge might likely be reassigned at a later date if the present judge was the subject of recusal and attempted to preside, undermining the credibility of the case. Further, the attorney-client relationship issue with the insurance consultant can never be taken out of the case.

Conclusion

Thus, understanding that appearances of fairness and absence of conflict are paramount, that an attorney/client privilege exists between the judge and a significant insurance consultant (who could well be subpoenaed as an expert at trial), the undersigned reluctantly must recuse himself from this case because the ends of justice so require. Case law around the country supports recusal in the event the judge’s present lawyer is or could be the dispositive witness/advocate in the ultimate insurance issues, as a matter of law in a case just like this.

  
Tod J. Kaufman, Judge

IN THE CIRCUIT COURT OF KANAWHA COUNTY

REQUEST FOR CASE REASSIGNMENT

This form should be used for the expeditious assignment of cases pursuant to the new case management system. It should be forwarded to the Chief Judge and filed with the Clerk.

Civil Action No. 15-C-1022

CENTRAL REGIONAL WV AIRPORT AUTHORITY

v.

TRIAD ENGINEERING, INC.

Requested by: Carrie L. Webster

Judge Carrie L. Webster

Date: 6/23/15

(Please check one): ☒ Recuse ☐ Retain ☐ Other

**REASON:** Prior to her judicial appointment, the undersigned was employed by and a practicing attorney at the law firm of Bucci, Bailey and Javins (2000 to 2009), who presently represents the Plaintiff in the above-styled case. Thus, during the pendency of her first term as circuit judge (2010-2016), it has been the practice of the undersigned to recuse herself from cases involving her former employer, and does so in the instant case so that any appearance of conflict or bias is avoided.

Yes Approved by Chief Judge

\_\_\_\_\_ Denied by Chief Judge

NEW ASSIGNMENT

Random Rotation by Circuit Clerk:

Tabit 6/24/15  
(Name of Assigned Judge)

The Circuit Clerk is **DIRECTED** to send a copy of this *Voluntary Recusal and Case Reassignment Form* to counsel of record and/or any unrepresented parties.

1cm: Anthony Majestro Esq.  
405 Capitol St Suite P1200  
Chas, WV 25301

Gott Segal Esq.  
810 Kanawha Blvd E  
Chas WV 25301

Timothy Bailey Esq.  
213 Hale St  
PO BOX 3712  
Chas, WV 25337



SCANNED



## IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022  
Judge Joanna Tabit

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,  
LANCER INSURANCE COMPANY,  
A Delaware corporation,

FILED  
2015 JUN 25 PM 1:12  
CATY L. WILSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

SCANNED

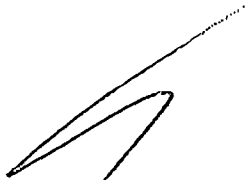
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
a Pennsylvania corporation,  
AIG AEROSPACE INSURANCE SERVICES, INC.,  
a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURANCE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

#### NOTICE OF HEARING

On June 25, 2015, comes the Plaintiff, by and through counsel, and notifies the parties that a hearing on **Emergency Motion to Preserve Real Evidence** will be held on **Thursday, July 2, 2015, beginning at 9:00 a.m.** before the Honorable Joanna Tabit, at the Kanawha County Courthouse, 111 Court Street, Charleston, West Virginia. All parties are invited to attend and protect their interests.

**CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
By Counsel**

  
\_\_\_\_\_  
Anthony J. Majestro (WVSB 5165)  
POWELL & MAJESTRO, PLLC  
405 Capitol Street, Suite P1200  
Charleston, WV 25301  
Phone: 304-346-2889  
Fax: 304-346-2895

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

2015 JUN 25 PM 1:12

CATHY D. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

Civil Action No. 15-C-1022  
Judge Joanna Tabit

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.,  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO — ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,  
LANCER INSURANCE COMPANY,  
A Delaware corporation,

LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
a Pennsylvania corporation,  
AIG AEROSPACE INSURANCE SERVICES, INC.,  
a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURANCE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

### CERTIFICATE OF SERVICE

On June 25, 2015 comes the undersigned counsel and does hereby certify that service of the attached **Emergency Motion to Preserve Real Evidence** has been made upon all parties by facsimile transmission, email and/or USPS as indicated on the attached Service List.

  
\_\_\_\_\_  
Anthony J. Majestro (WVSB 5165)

Central West Virginia Regional Airport Authority, Inc. v. Triad Engineering, Inc.

Civil Action No. 15-C-1022 (Judge Tabit)

**SERVICE LIST**

***Via Facsimile & Email***

Teresa Dumire, Esq.  
Kay Casto & Chaney, PLLC  
1085 Van Voorhis Road  
Morgantown, WV 26505  
Phone: 304-225-0970 x13  
Fax: 304-225-0974  
Email: [tdumire@kaycasto.com](mailto:tdumire@kaycasto.com)

***Via Facsimile & Email***

Kevin A. Nelson, Esq.  
Dinsmore & Shohl PC  
Huntington Square  
900 Lee Street, East, Suite 600  
Charleston, WV 25301  
Phone: 304-720-7545  
Fax: 304-344-4309  
[kevin.nelson@dinsmore.com](mailto:kevin.nelson@dinsmore.com)

***Via Facsimile & Email***

John C. Palmer, Esq.  
Robinson & McElwee, Esq.  
Charleston, WV  
Phone: 304-347-8324  
Fax: 304-344-9566  
[jcp@ramlaw.com](mailto:jcp@ramlaw.com)  
*Counsel for Defendant Triad Engineering, Inc.*

***Via Facsimile & Email***

Jack Smith, Esq.  
Flaherty Sensabaugh Bonasso PLLC  
200 Capitol Street  
Charleston, WV 25338-3843  
Phone: 304-205-6386  
Fax: 304-345-0260  
[jsmith@fsblaw.com](mailto:jsmith@fsblaw.com)  
*Counsel for Defendant Royal Ten Cate (USA), Inc.*

***Via USPS***

Ace American Insurance Company  
c/o Saverio M. Rocca, Esq.  
436 Walnut Street WAO4K  
Philadelphia, PA 19106

***Via Facsimile & Email***

Michael P. Markins, Esq.  
Mannion & Gray Co., LPA  
707 Virginia Street, East, Suite 260  
Charleston, WV 25301  
Phone: 304-932-0151  
Fax: 304-513-4243  
[mmarkins@mannongray.com](mailto:mmarkins@mannongray.com)  
*Counsel for Defendant Cast & Baker Corporation*

***Via Facsimile & Email***

Norman T. Daniels, Jr., Esq.  
Daniels Law Firm PLLC  
BB&T Square  
300 Summers Street, Suite 1270  
Charleston, WV 25301  
Phone: 304-342-6666  
Fax: 304-342-6677  
[norndaniels@danielslawfirm.com](mailto:norndaniels@danielslawfirm.com)  
*Counsel for Defendant West Virginia Paving, Inc.*

***Via Facsimile & Email***

Brent Kesner, Esq.  
Kesner & Kesner  
112 Capitol Street  
PO Box 2587  
Charleston, WV 25329  
Phone: 304-345-5200  
Fax: 304-345-5265  
Email: [bkesner@kesnerlaw.com](mailto:bkesner@kesnerlaw.com)  
*Counsel for Defendant Westfield Insurance Company*

***Via USPS***

Affordable Asphalt Maintenance Corp.  
Gary L. Painter  
PO Box 207  
Parkersburg, WV 26102

Central West Virginia Regional Airport Authority, Inc. v. Triad Engineering, Inc.

Civil Action No. 15-C-1022 (Judge Tabit)

**SERVICE LIST**

***Via USPS***

AIG Aerospace Insurance Services, Inc.  
Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

***Via USPS***

Cincinnati Insurance Company  
c/o Mark Welsh  
6200 South Gilmore Road  
Fairfield, OH 45014

***Via USPS***

Erie Insurance Group  
100 Erie Insurance Place  
PO Box 1699  
Erie PA 16530

***Via USPS***

HDI-Gerling America Insurance Company  
Stephen Youngerman  
11150 W. Olympic Blvd, Suite 900  
Glendale, CA 90064

***Via USPS***

Lancer Insurance Company  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

***Via USPS***

New Hampshire Insurance Company  
George P. Lagos  
1750 Elm Street  
Manchester, NH 03107

***Via USPS***

Ohio Farmers Insurance Company  
One Park Circle  
Westfield Center, OH 44251

***Via USPS***

Architects & Engineers Insurance Company  
The Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

***Via USPS***

Engineered Arresting Systems Corporation  
Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

***Via USPS***

Great American Insurance Company  
301 E. Fourth Street  
Cincinnati, OH 45202

***Via USPS***

JMD Company, Inc.  
Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

***Via USPS***

Michael Baker Int'l, Inc.  
The Corporation Trust Company  
Corporation Trust Center 1209 Orange Street  
Wilmington, DE 19801

***Via USPS***

Novel Geo-Environmental, LLC  
171 Montour Run Road  
Moon Twp, PA 15108

***Via USPS***

Senex Explosives Inc.  
710 Millers Run Road  
Cuddy, PA 15031

Central West Virginia Regional Airport Authority, Inc. v. Triad Engineering, Inc.

Civil Action No. 15-C-1022 (Judge Tabit)

**SERVICE LIST**

***Via USPS***

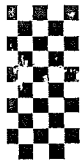
Travelers Indemnity Company  
c/o Corporation Service Company  
209 West Washington Street  
Charleston, WV 25302

***Via USPS***

XL Insurance America, Inc.  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

***Via USPS***

Liberty Mutual Insurance Company  
Corporation Service Company  
84 State Street  
Boston, MA 02109



# POWELL & MAJESTRO PLLC

ATTORNEYS AT LAW

405 CAPITOL STREET  
SUITE P-1200  
P.O. BOX 3081  
CHARLESTON, WV 25331

PHONE (304) 346-2889  
FAX (304) 346-2895

2015 JUN 25 PM 1:12

CATHY S. BAILEY, CLERK  
KANAWHA COUNTY CIRCUIT COURT  
WRITER'S E-MAIL  
paula@powellmajestro.com

June 25, 2015

*Via Facsimile 304-357-0473*

Kanawha County Circuit Clerk  
Kanawha County Courthouse  
111 Court Street  
Charleston, WV 25301

**RE: Central WV Regional Airport Authority,  
Inc. v. Triad Engineering, Inc., et al.  
Civil Action No. 15-C-1022 (Tabit)**

Dear Clerk:

Pursuant to W.Va. T.C.R. 12.04, please find enclosed for facsimile filing the attached **Notice of Hearing** regarding the **Emergency Motion to Preserve Real Evidence** that was filed yesterday.

Copies of the Notice and Motion were forwarded to counsel as indicated on the Notice of Hearing Certificate of Service. A copy of the Notice of Hearing was provided to Judge Tabit by facsimile transmission.

Should you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

Paula J. Moore  
Paralegal to Anthony J. Majestro

:pjm

Enclosures

cc: The Honorable Joanna Tabit (Fax: 304-357-9859)  
COS Service List (as indicated)



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA  
REGIONAL AIRPORT AUTHORITY, INC.,  
a West Virginia Corporation,

2015 JUN 29 AM 9:04

CATHY S. GARDIN, CLERK  
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

Civil Action No.: 15-C-1022  
Judge Carrie Webster

TRIAD ENGINEERS, INC., a  
West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
a Delaware corporation;  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES, INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION, a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS CORPORATION,  
d/b/a ZODIAC ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO-ENVIRONMENTAL, LLC,  
a Pennsylvania corporation;  
JMD COMPANY, INC., a Delaware corporation;  
ARCHITECTS & ENGINEERS INSURANCE COMPANY,  
a Delaware corporation;  
ERIE INSURANCE GROUP, a Pennsylvania corporation;  
GREAT AMERICAN INSURANCE COMPANY,  
an Ohio corporation;  
HDI-GERLING AMERICA INSURANCE COMPANY,  
An Illinois corporation; LANCER INSURANCE COMPANY,  
A Delaware corporation; LIBERTY MUTUAL INSURANCE  
COMPANY, a Massachusetts corporation;  
OHIO FARMERS INSURANCE COMPANY,  
an Ohio corporation; WESTFIELD INSURANCE COMPANY,  
An Ohio corporation; XL INSURANCE AMERICAN, INC.,  
a Delaware corporation; JOHN DOE INSURANCE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2;  
JOHN DOE INSURANCE COMPANY 3;

8

JOHN DOE INSURANCE COMPANIES 4-20; and  
JOHN DOES NOS 1 THROUGH 20,

Defendants.

NOTICE OF APPEARANCE ON BEHALF OF WEST VIRGINIA PAVING, INC.

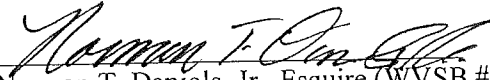
COME NOW Norman T. Daniels, Jr., Nicholas R. Stuchell and Daniels Law Firm, P.L.L.C., and  
hereby enter their appearance as counsel of record on behalf of Defendant, *West Virginia Paving, Inc.* in  
the above-styled action.

Please direct all future mailings in this matter to:

Norman T. Daniels, Jr. (WVSB 937)  
Nicholas R. Stuchell (WVSB # 11304)  
Daniels Law Firm, PLLC  
BB&T Square; 300 Summers Street; Suite 1270  
P. O. Box 1433  
Charleston, WV 25325  
Phone: (304) 342-6666; Fax: (304) 342-6677  
NormDaniels@DanielsLawFirm.com  
Nstuchell@DanielsLawFirm.com

WEST VIRGINIA PAVING, INC.

By Counsel

  
Norman T. Daniels, Jr., Esquire (WVSB # 937)  
Nicholas R. Stuchell, Esquire (WVSB # 11304)  
DANIELS LAW FIRM, PLLC  
BB&T Square; 300 Summers Street; Suite 1270  
P. O. Box 1433  
Charleston, WV 25325  
304-342-6666; fax: 304-342-6677  
normdaniels@danielslawfirm.com  
Nstuchell@danielslawfirm.com

## IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA  
REGIONAL AIRPORT AUTHORITY, INC.,  
a West Virginia Corporation,

Plaintiff,

v.

TRIAD ENGINEERS, INC., a  
West Virginia corporation; et al

Defendants.

2015 JUN 29 AM 9:04  
CATHY S. GARDON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

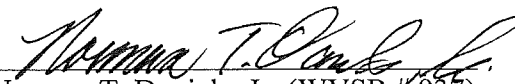
Civil Action No.: 15-C-1022  
Judge Carrie Webster

CERTIFICATE OF SERVICE

I, the undersigned counsel for West Virginia Paving, Inc., hereby certify that on June 25, 2015, I served the foregoing, *Notice of Appearance on Behalf of West Virginia Paving, Inc.* upon the below-listed parties, by depositing a true and exact copy of the same in the regular course of the United States mail, first class postage prepaid, in envelopes addressed as follows:

<p>Scott S. Segal, Esquire (WV # 4717) THE SEGAL LAW FIRM 810 Kanawha Blvd., East Charleston, WV 25301 304-344-9100 Scott.segal@segal-law.com <i>Counsel for Plaintiff</i></p>	<p>Timothy C. Bailey, Esq. (WV # 5839) Mark A. Barney, Esq. (WV # 10282) BUCCI BAILEY &amp; JAVINS, LC 213 Hale Street; P. O. Box 3712 Charleston, WV 25337 304-345-0346 timbailey@bbjlc.com; mbarney@bbjlc.com <i>Counsel for Plaintiff</i></p>	<p>Anthony J. Majestro, Esq. (WV # 5165) James C. Powell, Esq. (WV # 2957) POWELL &amp; MAJESTRO, PLLC 405 Capitol Street; Suite P 1200 Charleston, WV 25301 304-346-2889 amajestro@powellmajestro.com <i>Counsel for Plaintiff</i></p>
<p>Teresa Dunmire, Esquire KAY CASTO &amp; CHANEY, PLLC 1085 Van Vorris Road Morgantown, WV 26505 304-225-0970 Ext. 13; 304-225-0974 tdunmire@kaycasto.com</p>	<p>Kevin A. Nelson, Esquire DINSMORE &amp; SHOHL PC Huntington Square 900 Lee Street, East; Suite 600 Charleston, WV 25301 304-720-7545; 304-344-4309 kevin.nelson@dinsmore.com</p>	<p>John C. Palmer, Esquire ROBINSON &amp; McELWEE Charleston, WV 304-347-8324; 304-344-9566 jcp@ramlaw.com <i>Counsel for Triad Engineering, Inc.</i></p>
<p>Jack Smith, Esquire FLAHERTY SENSABAUGH BONASSO, PLLC 200 Capitol Street Charleston, WV 25301 304-205-6386; 304-345-0260 jsmith@fsblaw.com <i>Counsel for Royal Ten Cate (USA), Inc.</i></p>	<p>Michael P. Markins, Esquire MANNION &amp; GRAY CO., LPA 707 Virginia Street, East; Suite 260 Charleston, WV 25301 304-932-0151; 304-513-4243 mmarkins@mannongray.com <i>Counsel for Cast &amp; Baker Corporation</i></p>	<p>Brent Kesner, Esquire KESNER &amp; KESNER 112 Capitol Street P. O. Box 2587 Charleston, WV 25329 304-345-5200; 304-345-5265 bkesner@kesnerlaw.com <i>Counsel for Westfield Insurance Comp.</i></p>
<p>Ace American Insurance Company c/o Saverio M. Rocca, Esquire 436 Walnut Street WAO4K Philadelphia, PA 19106</p>	<p>Affordable Asphalt Maintenance Corp. Gary L. Painter P. O. Box 207 Parkersburg, WV 26102</p>	<p>AIG Aerospace Insurance Services, Inc. Corporation Service Company 2711 Centerville Road; Suite 400 Wilmington, DE 19808</p>

Cincinnati Insurance Company c/o Mark Welsh 6200 South Gilmore Road Fairfield, OH 45014	Erie Insurance Group 100 Erie Insurance Place P. O. Box 1699 Erie, PA 16530	HDI-Gerling America Insurance Comp Stephen Youngerman 11150 W. Olympic Blvd., Suite 900 Glendale, CA 90064
Lancer Insurance Company The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	New Hampshire Insurance Company George P. Lagos 1750 Elm Street Manchester, NH 03107	Ohio Farmers Insurance Company One Park Circle Westfield Center, OH 44251
Architects & Engineers Insurance Comp The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Engineered Arresting Systems Corporation Corporation Service Company 2711 Centerville Road; Suite 400 Wilmington, DE 19808	Great American Insurance Company 301 E. Fourth Street Cincinnati, OH 45202
JMD Company, Inc. Corporation Service Company 2711 Centerville Road; Suite 400 Wilmington, DE 19808	Michael Baker Int'l, Inc. The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Novel Geo-Environmental, LLC 171 Montour Run Road Moon Twp, PA 15108
Senex Explosives, Inc. 710 Millers Run Road Cuddy, PA 15031	Travelers Indemnity Company c/o Corporation Service Company 209 West Washington Street Charleston, WV 25302	Liberty Mutual Insurance Company Corporation Service Company 84 State Street Boston, MA 02109
XL Insurance America, Inc. The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801		

  
Norman T. Daniels, Jr. (WVSB #937)

Office of the Secretary of State  
Building 1 Suite 157-K  
1900 Kanawha Blvd E.  
Charleston, WV 25305

2015 JUL -6 AM 10:56  
CATHY S. GATSON  
KANAWHA COUNTY CIRCUIT COURT



**Natalie E. Tennant**  
Secretary Of State  
State Of West Virginia  
Phone: 304-558-6000  
866-767-8683  
Visit us online:  
[www.wvsos.com](http://www.wvsos.com)

Cathy Gatson  
Kanawha County Courthouse  
111 Court Street  
Charleston, WV 25301-2500

**Control Number:** 66235

**Defendant:** AFFORDABLE ASPHALT  
MAINTENANCE CORPORATION  
PO BOX 207  
PARKERSBURG, WV 26102 US

**Agent:** GARY PAINTER

**County:** Kanawha

**Civil Action:** 15-C-1022

**Certified Number:** 92148901125134100000711282

**Service Date:** 6/30/2015

I am enclosing:

**1 summons and amended complaint**

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

*Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.*

Sincerely,

A handwritten signature in cursive script that reads "Natalie E. Tennant".

Natalie E. Tennant  
Secretary of State

**SCANNED**  
*mc*

14-15

SUMMONS  
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia Corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware Corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware Corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,

2015 JUL -6 AM 10:  
CATHY S. BATES, CLERK  
KANAWHA COUNTY CIRCUIT COURT

2015 JUL -6 AM 10:57  
CATHY S. BATES, CLERK  
KANAWHA COUNTY CIRCUIT COURT

HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,  
LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
A Pennsylvania corporation,  
AIG AEROSPANCE INSURANCE SERVICES, INC.,  
A Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
An Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
A Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURNACE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANY 4-20,  
And JOHN DOES NOS 1 THROUGH 20,

Defendants.

**To the above-named Defendant: Affordable Asphalt Maintenance Corporation  
Gary L. Painter  
P.O. Box 207  
Parkersburg, WV 26102**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Bucci Bailey & Javins, L.C., plaintiff's attorney, whose address is Post Office Box 3712, Charleston, West Virginia, 25337, an answer, including any related counterclaim you may have, to the amended complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you

fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 6-18-15

Cathy S. Gatson, Clerk

Clerk of the Court

*B. C. High*



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

FILED  
2015 JUN 18 AM 11:21  
CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

v.

Civil Action No. 15-C-1022  
Judge Kaufman

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
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ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,

LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
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a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURNACE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

**AMENDED COMPLAINT**

The plaintiff, Central West Virginia Regional Airport Authority, Inc., for its complaint,  
hereby alleges as follows:

**PARTIES**

1. Plaintiff Central West Virginia Regional Airport Authority, Inc., (“the Authority”) is a political subdivision of the State of West Virginia, governed by a board comprised of representatives of Kanawha, Putnam, Lincoln, Boone, and Nicholas Counties, and the City of Charleston. At all relevant times, plaintiff Authority owned and operated Yeager Airport in Charleston, Kanawha County, West Virginia.

2. Defendant Triad Engineering, Inc. ("Triad") is a West Virginia corporation. Upon information and belief, its principal place of business is now in Pittsburgh, Pennsylvania. At all relevant times, Defendant Triad has been licensed to conduct and has been conducting business in the State of West Virginia. Triad provided design, engineering, supervision, inspection, monitoring, and advice with regard to the subject project discussed herein. Additionally, after completion of the subject project, defendant Triad continued to provide such services.

3. Defendant Cast & Baker Corporation ("Cast") is a Pennsylvania Corporation with its principal place of business in Cannonsburg, Pennsylvania. At all relevant times, Defendant Cast has been licensed to conduct and has been conducting business in the State of West Virginia, and was the general contractor on the subject project. Cast provided design, engineering, supervision, inspection, monitoring, advice, construction work and other construction related services on the subject project. Additionally, after completion of the project, defendant Cast continued to provide such services.

4. Defendant Michael Baker International, Inc., a/k/a Michael Baker Corporation ("Michael Baker") is a Delaware Corporation. Michael Baker designed and inspected the RSA and MSE system as described herein.

5. Defendant West Virginia Paving, Inc. ("WV Paving") is a West Virginia corporation. Upon information and belief, its principal place of business is in Dunbar, Kanawha County, West Virginia. At all relevant times, Defendant WV Paving has been licensed to conduct and has been conducting business in the State of West Virginia. WV Paving provided paving services and products upon which an EMAS system, discussed herein, was installed on the subject project.

6. Defendant Senex Explosives, Inc. ("Senex") is a Pennsylvania corporation. At all relevant times, Defendant Senex has been licensed to conduct and has been conducting business in the State of West Virginia. Senex provided explosives and blasting services on the subject project.

7. Defendant Affordable Asphalt Maintenance Corporation ("Affordable Asphalt") is a West Virginia corporation. Upon information and belief, its principal place of business is in Mineral Wells, Wood County, West Virginia. At all relevant times, Defendant Affordable Asphalt has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant Affordable Asphalt installed the subject EMAS system discussed herein.

8. Defendant Engineered Arresting Systems Corporation ("Engineered Arresting") is a Delaware corporation. At all relevant times, Defendant Engineering Arresting has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant Engineering Arresting designed, sold, distributed and/or manufactured the EMAS system described herein and provided advice and expertise in the selection and installation of the EMAS system.

9. Defendant Royal Ten Cate (USA), Inc. ("Royal Ten") is a Delaware corporation. At all relevant times, Defendant Royal Ten has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant was the manufacturer and/or distributor of the geosynthetic materials utilized on the subject project including the Miramesh GR, and the Miragrid 10XT & 20XT.

10. Defendant Novel Geo-Environmental, LLC ("Novel") is a Pennsylvania corporation. At all relevant times, Defendant Novel has been licensed to conduct and has been

conducting business in the State of West Virginia. Defendant Novel provided quality-control services including geotechnical compaction testing and/or analysis for the subject project.

11. Defendant JMD Company, Inc., (“JMD”) is a Delaware corporation. At all relevant times, Defendant JMD has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant JMD distributed and/or modified the geosynthetic materials utilized on the subject product including the Miramesh GR and Miragrid 10XT & 20XT, and further provided advice and expertise in the selection and installation of the subject products.

12. Defendant Architects & Engineers Insurance Company (“Architects”) is a Delaware corporation. At all relevant times, Defendant Architects has been licensed to conduct and has been conducting business in the State of West Virginia.

13. Defendant Erie Insurance Group (“Erie”) is a Pennsylvania corporation. At all relevant times, Defendant Erie has been licensed to conduct and has been conducting business in the State of West Virginia.

14. Defendant Great American Insurance Company (“Great American”) is an Ohio corporation. At all relevant times, Defendant Great American has been licensed to conduct and has been conducting business in the State of West Virginia.

15. Defendant, Lancer Insurance Company (“Lancer”) is a Delaware corporation. At all relevant times, Defendant Lancer has been licensed to conduct and has been conducting business in the State of West Virginia.

16. Defendant, HDI-Gerling America Insurance Company (“HDI-Gerling”) is a Illinois corporation. At all relevant times, Defendant HDI-Gerling has been licensed to conduct and has been conducting business in the State of West Virginia.

17. Defendant Liberty Mutual Insurance Company (“Liberty”) is a Massachusetts corporation. At all relevant times, Defendant Liberty has been licensed to conduct and has been conducting business in the State of West Virginia.

18. Defendant Ohio Farmers Insurance Company (“Ohio”) is an Ohio corporation. At all relevant times, Defendant Ohio has been licensed to conduct and has been conducting business in the State of West Virginia.

19. Defendant Westfield Insurance Company (“Westfield”) is an Ohio corporation. At all relevant times, Defendant Westfield has been licensed to conduct and has been conducting business in the State of West Virginia.

20. Defendant, XL Insurance America, Inc. (“XL”) is an Delaware corporation. At all relevant times, Defendant XL has been licensed to conduct and has been conducting business in the State of West Virginia.

21. Defendant, New Hampshire Insurance Company (“New Hampshire”) is a Pennsylvania corporation. At all relevant times, Defendant New Hampshire has been licensed to conduct and has been conducting business in the State of West Virginia.

22. Defendant, AIG Aerospace Insurance Services, Inc. (“AIG Aerospace”) is a Georgia corporation. At all relevant times, Defendant AIG Aerospace has been licensed to conduct and has been conducting business in the State of West Virginia.

23. Defendant, Cincinnati Insurance Company (“Cincinnati”) is an Ohio corporation. At all relevant times, Defendant Cincinnati has been licensed to conduct and has been conducting business in the State of West Virginia.

24. Defendant, Travelers Indemnity Company (“Travelers”) is a Connecticut corporation. At all relevant times, Defendant Travelers has been licensed to conduct and has been conducting business in the State of West Virginia.

25. Defendant ACE American Insurance Company (“ACE”) is a Pennsylvania corporation. At all relevant times, Defendant ACE has been licensed to conduct and has been conducting business in the State of West Virginia.

26. Defendants John Doe Insurance Companies Nos. 1 through 20 are potentially unknown insurance companies or other entities.

27. Defendants John Doe Nos. 1 through 20 are potentially unknown defendants in this action who will be discovered during the course of discovery.

#### **JURISDICTION AND VENUE**

28. That at all times mentioned herein, the Defendants Triad, Cast, Michael Baker, WV Paving, Senex, Affordable Asphalt, Engineered Arresting, Royal Ten, Novel, Architects, Erie, Great American, HDI-Gerling, Lancer, Liberty, Ohio Farmers, Westfield, XL, New Hampshire and AIG Aerospace are now and/or were corporations doing business in Kanawha County, West Virginia.

29. Jurisdiction and venue are appropriate in the Circuit Court of Kanawha County, West Virginia, pursuant to W. Va. Code § 56-1-1, in that the events giving rise to this cause of action occurred in Kanawha County, West Virginia; one or more defendant does business in West Virginia; and plaintiff avails itself of the Circuit Court of Kanawha County, West Virginia, pursuant to the principles set forth in W. Va. Code §56-1-1 and W. Va. Code §56-1-1a.

30. The claims raised herein are claims under West Virginia law and do not concern any federal law or federal constitutional provision.

## FACTS

31. The plaintiff realleges and incorporates by reference Paragraphs 1 through 30.

32. Yeager Airport sits on a man-made plateau that was constructed in the 1940s by removing portions of the ridge and hilltops. In the original grading process, more than 9 million cubic yards of earth and rock were moved with the aid of more than 2 million pounds of explosives.

33. In and around 2003, the Authority decided to provide a Runway Safety Area (RSA) for its runways, including Runway 5-23. Runway 5-23 is the runway that is the subject of this action.

34. It was determined that the best manner in which to provide the RSA for Runway 5-23 was a 500 foot extension of the runway's southernmost end and the use of an engineered material arresting system (EMAS). An EMAS system is a system of specialized air-entrained cement blocks at the end of a runway onto which an airplane can travel in an emergency. These blocks are meant to collapse under the weight of the airplane thereby stopping or arresting the airplane's progress and preventing a crash.

35. Because of Yeager Airport's location on top of a ridge, extending the runway was not possible without dramatically altering the natural grade of the land.

36. The Runway 5-23 Extension project involved disturbing at least 42.5 acres of vegetated and forested land, including at least 13.75 acres of clear-cutting. Fill and other materials would have to be brought in to construct a mechanically stabilized earth structure (MSE) or manmade slope so the extension could be built at the same elevation as the existing runway. The plan called for the movement of approximately 750,000 cubic yards of earth. At



the time, this would be the largest MSE ever designed and constructed. The total cost for the extensions to both runways was in excess of thirty million dollars.

37. Through a bidding procedure, and based upon certain representations and the amount of Defendant Triad's bid, the Authority contracted with Defendant Triad for the design and engineering work for the runway extension project including, but not limited to, the design and engineering of the MSE. The Authority contracted with Defendant Cast to serve as the contractor for the construction work including, but not limited to, the construction of the MSE. Other named defendants herein provided services and products in conjunction with those contracts.

38. Work started on the Runway 5-23 RSA and the MSE on May 31, 2005. The RSA and the MSE was completed in June of 2007 with the installation of the EMAS blocks.

39. Pursuant to FAA regulations, the EMAS blocks and the runway extension were continually inspected and monitored by the Authority after completion.

40. On July 28, 2013, employees of the Authority were preparing to paint the EMAS blocks with the required coating and noticed separation in and around the EMAS blocks which was not present the week before.

41. The Authority immediately contacted defendants Triad and Cast and informed defendants of this development.

42. Defendants Triad and Cast inspected the EMAS and MSE area and defendants Triad and Cast informed the Authority they did not think there was a problem with the EMAS system nor the MSE on which it was placed. Defendant Triad instructed the Authority to monitor the area through surveys. In fact, defendant Triad informed the Authority that settlement of as much as 24" was within normal range. As instructed, the Authority had surveys

conducted of the area and provided those to defendants Triad and Cast. Surveys were conducted eventually by defendant Triad itself along with drilling and installation of monitoring equipment into the MSE.

43. The EMAS and MSE area continued to settle uniformly until early 2015. During February and early March of 2015, the settlement of the EMAS and MSE area worsened and the Authority began to inform persons and organizations with property directly under the EMAS and MSE structure that they should vacate the area for safety.

44. The Authority was so concerned about the condition of the EMAS and MSE area, that a Board meeting was held at 3pm on March 11, 2015, wherein a representative of defendant Triad was asked by a Board member what the chances were of a catastrophic failure of the EMAS and MSE area. The representative of defendant Triad answered, "very slight."

45. On March 12, 2015, at 12:15 pm, less than 24 hours after being told the chances of a catastrophic failure were slight, the Runway 5-23 EMAS and MSE area catastrophically failed sending hundreds of thousands of cubic yards of fill and other material cascading down and onto the Keystone Drive area of Charleston destroying homes, a church, public roads and damming a stream. All utilities in the area, including natural gas, electricity, water, sewer, telephone and fiber-optic services were destroyed. The damages suffered by the residents of Keystone Drive and the Authority total in the millions of dollars.

46. Defendants knew or should have known of prior failures of MSE systems and failed to warn or otherwise advise plaintiff of known failures of MSE systems on other sites.

47. The plaintiff reasonably relied upon the claimed expertise of the defendants with respect to the subject project.

48. In addition to the loss of millions of dollars invested in the original EMAS and MSE structures' design and construction, the Authority has or will lose millions of dollars in remediation of the damages and the response to the damages caused by the wrongful conduct of the defendants, including the millions of dollars necessary to rebuild the RSA lost when the EMAS and MSE structures catastrophically failed. Losses were incurred by the Authority and others including persons and property owners near the Authority, public utilities, and businesses. Such losses include, but are not limited to, expenses and costs for providing police, fire and emergency relief. The harm sustained as a result of defendants' conduct further includes, but is not limited to, all costs associated with the investigation of the slope failure, property damage and loss, aggravation, annoyance, remediation costs, repair costs, construction costs, engineering costs, replacement costs, and other damages including attorney's fees and costs.

#### **COUNT I: NEGLIGENCE**

**Defendants Triad Engineering, Inc.; Cast & Baker Corporation; Michael Baker Corporation; West Virginia Paving, Inc.; Senex Explosives, Inc.; Affordable Asphalt Maintenance Corporation; and Novel Geo-Environmental, LLC**

49. The plaintiff realleges and incorporates by reference Paragraphs 1 through 48.

50. These defendants had responsibility for the design, building, inspection, analysis, testing, engineering and installation of the subject runway safety area, EMAS and MSE described herein.

51. Defendants owed duties to the plaintiff to act in a reasonably prudent manner and breached the duties owed to the plaintiff.

52. Defendants' breach(es) of the duties owed to the plaintiff include, but are not limited to, the following acts and/or omissions:

- a. Improperly designed and engineered the runway safety area, MSE, EMAS and other related improvements;

- b. Improperly designed and engineered the fill material/compaction requirements for the runway safety area, MSE and other related improvements;
- c. Improperly tested and investigated subsurface and other conditions of the runway safety area, MSE and other related improvements;
- d. Failed to take steps to prevent collapse, subsidence and soil consolidation of the runway safety area, MSE and other related improvements;
- e. Failed to properly inspect the construction of the runway safety area, MSE, EMAS and other related improvements;
- f. Failed to properly test or otherwise verify that the fill comprising the runway safety area and MSE met necessary requirements prior to certification;
- g. Failed to properly monitor, warn or instruct as to the safety of the subject work even after concerns were raised with regard to the subject job;
- h. Improperly and negligently constructed and built the EMAS and MSE system;
- i. Improperly and negligently supervised the construction and installation of the EMAS and MSE systems;
- j. Improperly and negligently failed to design, contract, inspect or ensure the proper placement and operation of the drainage system on the subject project;
- k. Improperly and negligently failed to design, construct, inspect or ensure the proper placement and operation of the Miramesh GR and Miragrid 10XT & 20XT on the subject project;
- l. Improperly and negligently failed to warn or otherwise instruct of the risk, dangers and hazards associated with the 1:1 slope on the subject project; and

- m. other such duties which will be determined during the course of discovery in this action.

53. The defendants further breached the standard of care, including but not limited to industry standards, in their design, construction, inspection, analysis, testing, engineering, supervision of and installation of the RSA, EMAS and MSE systems.

54. The event in question is of a kind which ordinarily does not occur in the absence of negligence. Other responsible causes, including the conduct of the plaintiff and third persons, do not exist. The indicated negligence is within the scope of the defendants' duties to the plaintiff. As such, negligence may be presumed from the facts in this action.

55. As a direct and proximate result of the aforesaid conduct of the defendants as described hereinabove, the plaintiffs suffered harms and losses as described herein.

#### **COUNT II: BREACH OF IMPLIED WARRANTY**

**Defendants Triad Engineering, Inc.; Cast & Baker Corporation; Michael Baker Corporation; West Virginia Paving, Inc.; Senex Explosives, Inc.; Affordable Asphalt Maintenance Corporation; and Novel Geo-Environmental, LLC**

56. The plaintiff realleges and incorporates by reference Paragraphs 1 through 55.

57. These defendants, by and through their affirmations, representations and conduct, impliedly warranted that the work and services provided were undertaken with ordinary skill, care and diligence commensurate with that rendered by members of its profession.

58. The work and services provided by defendants was not performed with ordinary skill, care or diligence and was not performed in a skillful, careful, and workmanlike manner.

59. As a direct result of the defendants' breach of implied warranty, the plaintiff suffered harms and losses as described herein.

#### **COUNT III: BREACH OF CONTRACT**

**Defendants Triad Engineering, Inc.; Cast & Baker Corporation; Michael Baker Corporation; West Virginia Paving, Inc.; Senex Explosives, Inc.; Affordable Asphalt Maintenance Corporation; and Novel Geo-Environmental, LLC**

60. The plaintiff realleges and incorporates by reference Paragraphs 1 through 59.

61. A contract existed between plaintiff and defendants to perform work related to the subject project at the Yeager Airport in Charleston, Kanawha County, West Virginia, or plaintiff was an intended third-party beneficiary of contracts between and among defendants related to the RSA project, including the EMAS and MSE system.

62. All conditions precedent have been performed by the plaintiff or occurred for performance under the contract.

63. The defendants, by and through their conduct and/or the conduct of their agents as described herein, have breached material terms of these contracts by failing to perform work or other services in a skillful, careful, and workmanlike manner.

64. As a result of defendants' breach of contract, the plaintiff suffered harms and losses as described herein.

#### **COUNT IV: BREACH OF QUASI-CONTRACT**

**Defendants Triad Engineering, Inc.; Cast & Baker Corporation; Michael Baker Corporation; West Virginia Paving, Inc.; Senex Explosives, Inc.; Affordable Asphalt Maintenance Corporation; and Novel Geo-Environmental, LLC**

65. The plaintiff realleges and incorporates by reference Paragraphs 1 through 64.

66. The plaintiff relied upon the promises of defendants, including the affirmations, representations and conduct of the defendants, to perform work or other services with ordinary skill, care and diligence in a skillful, careful, and workmanlike manner.

67. Defendants reasonably expected the plaintiff to rely upon their promises and the plaintiff did, in fact, rely upon the promises of the defendants.

68. As a result of the plaintiff's reasonable reliance upon the promises of the defendants, the plaintiff suffered harms and losses as described herein. Justice requires that the plaintiff be compensated for the harms and losses, as contained herein.

**COUNT V: STRICT PRODUCT LIABILITY**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

69. The plaintiff realleges and incorporates by reference Paragraphs 1 through 68.

70. Defendant Royal Ten Cate (USA), Inc., was the manufacturer and/or distributor of the Miramesh GR and Miragrid 10XT & 20XT geosynthetic reinforcement materials utilized on the project described herein.

71. Defendants Engineering Arresting Systems Corporation and JMD Company, Inc., were the manufacturers and/or distributors the EMAS land-based aerospace arresting system and its related components.

72. The above-identified products and the components designed, manufactured and/or distributed by defendants were defective by design, manufacture and use when the products left the possession of said defendants, in that they were not reasonably safe for their intended uses, and subjected the plaintiff to harms and losses.

73. Defendants failed to warn or otherwise instruct plaintiff of the dangers associated with their product and the potential consequences.

74. As a direct and proximate result thereof of said defects, the plaintiff sustained harms and losses as described herein.

**COUNT VI: EXPRESS WARRANTY**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

75. The plaintiff realleges and incorporates by reference Paragraphs 1 through 74.

76. That at all times mentioned herein and prior thereto, defendants Royal Ten Cate (USA), Inc., Engineering Arresting Systems Corporation and JMD Company, Inc., expressly warranted that their products and their related components were reasonably safe.

77. That at all times mentioned herein and prior thereto, reliance was placed upon the skill and judgment of defendants and upon the defendants' express warranty as above described.

78. That at all times mentioned herein, the express warranty was not true and the product were, in fact, not safe or reasonably suited and fit for their intended use, and as a direct result of said breach of express warranty, the plaintiff sustained harms and losses as described herein.

**COUNT VII: IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

79. The plaintiff realleges and incorporates by reference Paragraphs 1 through 78.

80. That at all times mentioned herein, the defendants Royal Ten Cate (USA), Inc., Engineering Arresting Systems Corporation and JMD Company, Inc., impliedly warranted that their products and their related components were safe and fit for the particular purposes for which the product was to be used, that is, the product was safe and suitable for its particular use at the subject airport.

81. Defendants, at the time of contracting for the sale of the subject products and thereafter, had reason to know the particular purpose for which the product was required.

82. That at all times mentioned herein, reliance was placed upon the defendants' skill and judgment and the implied warranty of fitness as described herein.



83. Defendants failed to warn or otherwise instruct plaintiff of the dangers associated with their products and the potential consequences.

84. That the above-described products and their related components were, in fact, not fit for use for their intended purpose, and as a proximate result of the breach of said warranty of fitness of use, the plaintiff has sustained harms and losses as described herein.

**COUNT VIII: IMPLIED WARRANTY OF MERCHANTABILITY**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

85. The plaintiff realleges and incorporates by reference Paragraphs 1 through 84.

86. That at all times mentioned herein, the defendants Royal Ten Cate (USA), Inc., Engineering Arresting Systems Corporation and JMD Company, Inc., impliedly warranted that their products and their related components described herein was of merchantable quality, fit, safe and in proper condition for the ordinary use for which those types of products and their related components were designed and used.

87. Further, at all times mentioned herein, reliance was placed upon the said implied warranties of merchantability by the plaintiff.

88. Defendants failed to warn or otherwise instruct plaintiff of the dangers associated with their products and the potential consequences.

89. That the defendants' products and their related components were not of merchantable quality and were unfit and unsafe for their purpose and as a proximate result of the breach of said warranty of merchantability, plaintiff suffered harms and losses as described herein.

**COUNT IX: NEGLIGENCE**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

90. The plaintiff realleges and incorporates by reference Paragraphs 1 through 89.

91. Defendants Royal Ten Cate (USA), Inc., Engineering Arresting Systems Corporation and JMD Company, Inc., owed a duty to plaintiff to protect it from foreseeable harms and losses.

92. That at all times mentioned herein, the defendants were negligent in controlling, designing, installing, manufacturing, maintaining, repairing, inspecting, distributing, selling, reconfiguring, and failing to warn of the dangers and/or inadequacies for their respective products and their related components.

93. That as a direct and proximate result of the negligence of the said defendants, plaintiff sustained harms and losses as described herein.

#### **COUNT X : DECLARATORY JUDGMENT**

**Defendants Architects and Engineers Insurance Company, Ohio Farmers Insurance Company, Westfield Insurance Company, Liberty Mutual Insurance Company, Lancer Insurance Company, Great American Insurance Company, Erie Insurance Group – Erie Property & Casualty Insurance Company, XL Insurance America, Inc., HDI-Gerling America Insurance Company, Cincinnati Insurance, and The Travelers Indemnity Company**

94. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 93 of this Complaint as if set forth herein verbatim.

95. Upon information and belief, for the claims asserted by the plaintiff herein, the following defendants are insured by the following defendant insurance companies:

- Defendant Triad Engineering, Inc., is insured by defendant Architects and Engineers Insurance Company, A Risk Retention Group under Policy No. AEICPG-13;

- Defendant Triad Engineering, Inc., is also insured by defendant Cincinnati Insurance Company under a commercial general liability policy;
- Defendant Triad Engineering, Inc., is additionally insured by defendant Westfield Insurance Company under a commercial general liability policy;
- Defendant Cast & Baker Corporation is insured by defendants Ohio Farmers Insurance Company and Westfield Insurance Company under Bond No.: 0833304;
- Defendant Cast & Baker Corporation is also insured by defendant Westfield Insurance Company under a general commercial liability policy;
- Defendant Cast & Baker Corporation is additionally insured by defendant Travelers Indemnity Company under a general commercial liability policy listing defendant Triad Engineering, Inc., and the plaintiff as an additional insured;
- Defendant Cast & Baker Corporation is additionally insured by defendant Travelers Indemnity Company under a commercial excess liability (umbrella) insurance policy;
- Defendant West Virginia Paving, Inc. is insured by defendant Liberty Mutual under Policy No. RG2-C85-004095-114;
- Defendant Senex Explosives, Inc., is insured by defendant Lancer Insurance Company under Policy Nos. GL8028883, XS8028893, and XS8028903. Defendant Senex Explosive, Inc. is also insured by defendant Great American Insurance Company under Policy No. CPP669684001;

- Defendant Affordable Asphalt Maintenance Corporation is insured by defendants Erie Insurance Group -- Erie Insurance Property & Casualty Company and Westfield;
- Defendant Engineered Arresting Systems Corporation, d/b/a Zodiac Arresting Systems America is insured by defendant XL Insurance America, Inc; and
- Defendant Royal Ten Cate (USA), Inc. is insured by defendant HDI-Gerling America Insurance Company.

96. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, Plaintiff seeks declaratory judgment against the defendant insurance companies identified herein this Count to the effect that any and all applicable policies issued by the defendant insurance companies to the named defendants in this action provide coverage for any and all claims asserted by the plaintiffs in this litigation and that no exclusions, including but not limited to, landslide exclusions, apply to any of plaintiff's claims asserted in this action.

**COUNT XI : DECLARATORY JUDGMENT**  
**Defendants John Doe Insurance Company Nos. 1, 2 and 3**

97. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 96 of this Complaint as if set forth herein verbatim.

98. Upon information and belief, at the time of the filing of this Complaint, the insurance carriers for defendants Michael Baker Corporation and Novel Geo are unknown, and will be treated as defendant John Doe Insurance Company No. 1 and defendant John Doe Insurance Company No. 2.

99. Upon information and belief, defendant Triad has an additional applicable insurance carrier who is unknown at the time of the filing of this Complaint and will be treated as defendant John Doe Insurance Company No. 3.

100. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, Plaintiffs seek declaratory judgment against defendants John Doe Insurance Company Nos 1 through 3, to the effect that any and all applicable policies issued by defendant John Doe insurance company Nos 1 through 3 to defendants Michael Baker Corporation, Novel Geo and/or Triad in this action provide coverage for any and all claims asserted by the plaintiffs in this litigation and that no exclusions, including but not limited to, landslide exclusions, apply to any of plaintiff's claims asserted in this action.

**COUNT XII: DECLARATORY JUDGMENT**  
**Defendants John Doe Insurance Company Nos. 4 - 20**

101. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 100 of this Complaint as if set forth herein verbatim.

102. At the time of the filing of this Complaint, to the extent that any insurance company for the named defendants or any defendant named later are unknown at the time of the filing of this Complaint, these unknown defendant insurance companies will be treated as John Doe Insurance Company Nos. 4 through 20.

103. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, Plaintiffs seek declaratory judgment against defendant John Doe Insurance Company Nos. 4 through 20, to the effect that any and all applicable policies issued by defendant John Doe Insurance Company Nos. 4 through 20 to any current or future defendant in this action provide coverage for any and all claims asserted by the plaintiffs in this

litigation and that no exclusions, including but not limited to, landslide exclusions, apply to any of plaintiff's claims asserted in this action.

**COUNT XIII: DECLARATORY JUDGMENT**  
**Defendants New Hampshire Insurance Company,**  
**AIG Aerospace Insurance Services, Inc., and ACE American Insurance Company**

104. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 103 of this Complaint as if set forth herein verbatim.

105. Upon information and belief, plaintiff is insured by defendants New Hampshire Insurance Company and AIG Aerospace, and ACE American Insurance Company. Upon information and belief, defendant New Hampshire Insurance Company is plaintiff's property insurer and defendants AIG Aerospace and Ace American Insurance Company are plaintiff's commercial liability insurer.

106. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, plaintiff seeks declaratory judgment against defendants New Hampshire Insurance Company, AIG Aerospace and ACE American Insurance Company to the effect that any and all applicable policies issued by defendants New Hampshire Insurance Company, AIG Aerospace and ACE American Insurance Company to the plaintiff provide coverage, defense and/or indemnification to the plaintiff for any and all third party claims brought against the plaintiff, including but not limited to any claim brought by surrounding individuals and property owners, and that no exclusions, including but not limited to, landslide exclusions, apply to any third party claim.

**COUNT XIV: DECLARATORY JUDGMENT**  
**Defendants New Hampshire Insurance Company,**  
**AIG Aerospace Insurance Services, Inc., and ACE American Insurance Company**

107. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 106 of this Complaint as if set forth herein verbatim.

108. Upon information and belief, plaintiff Central West Virginia Regional Airport Authority, Inc. is insured by defendants New Hampshire Insurance Company, AIG Aerospace and ACE American Insurance Company. Upon information and belief, defendant New Hampshire Insurance Company is plaintiff's property insurer and defendants AIG Aerospace and ACE American Insurance Company are plaintiff's commercial liability insurer.

109. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, Plaintiff seeks declaratory judgment against defendants New Hampshire Insurance Company, AIG Aerospace and ACE American Insurance Company to the effect that any and all applicable policies issued by defendants New Hampshire Insurance Company, AIG Aerospace, and ACE American Insurance Company to the plaintiff provide coverage to the plaintiff for any and all first party claims brought by the plaintiff for damages to its own property and infrastructure related in any manner to this catastrophic event, and that no exclusions, including but not limited to, landslide exclusions, apply to any first party claim.

**PUNITIVE DAMAGES  
(All Defendants)**

110. Plaintiff hereby incorporates by reference paragraphs 1 through 109 as if fully cited herein.

111. The acts and omissions forming the basis of the aforementioned counts of this Complaint were of such extreme, willful, wanton, and reckless nature, and showed such gross indifference to warrant punitive damages. The acts of the defendants were carried out with a flagrant disregard for the rights of others and with actual awareness that their acts would, in reasonable probability, result in harm.

112. Defendants had actual, subjective awareness of the risk involved in their acts and omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

113. Punitive damages are justified to punish defendants for their knowing deliberate and wanton acts which resulted in the subject harms and losses. Punitive damages will serve to deter defendants from continuing to defy their obligations in their pursuit of profits.

114. Defendants' actions and conduct are and were of such willful, wanton, reckless, and unlawful nature and with such callous disregard, that in order to stop these acts from occurring again, plaintiff is entitled to an award of punitive damages in addition to other damages alleged herein.

115. That at all times mentioned herein, the acts of the defendants were joint, several and concurrent.

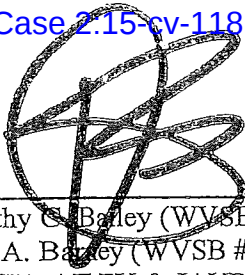
**WHEREFORE**, the plaintiff prays that this Court award compensatory, including but not limited to reimbursement for sums paid to persons and entities as a result of defendants' conduct, and punitive damages against defendants, jointly and severally; declare rights under the existing insurance contracts; award attorney's fees and costs; award pre and post-judgment interest; and grant other such relief as the Court deems equitable and just.

**PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.**

**CENTRAL WEST VIRGINIA  
REGIONAL AIRPORT AUTHORITY, INC.,**

By Counsel,





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and

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and

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022  
Judge Webster

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,

LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
a Pennsylvania corporation,  
AIG AEROSPACE INSURANCE SERVICES, INC.,  
a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURANCE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

### **EMERGENCY MOTION TO PRESERVE REAL EVIDENCE**

NOW COMES the plaintiff Central West Virginia Regional Airport Authority, Inc.,<sup>1</sup> by counsel, and hereby moves this Court for an order approving the preservation of real evidence. Specifically, the plaintiff seeks Court approval of a preservation protocol so as to permit the Authority to go forward with remediation of the subject project, including the rebuilding of certain portions of Runway 5-23 at Yeager Airport. In support of its motion, the plaintiff states as follows:

---

<sup>1</sup> Hereinafter referred to as "the Authority."

1. This action was instituted on May 22, 2015, and concerns the catastrophic failure of the mechanically stabilized earth structure ("MSE"); the engineered material arresting system ("EMAS"); and related components, for the Runway 5-23 extension project at Yeager Airport in Charleston, West Virginia.

2. On March 12, 2015, at 12:15 pm, less than 24 hours after being told the chances of a catastrophic failure were slight, the Runway 5-23 MSE, EMAS and related components at Yeager Airport catastrophically failed sending hundreds of thousands of cubic yards of fill and other material cascading down and onto the Keystone Drive area of Charleston destroying homes, a church, public roads and damming a stream. All utilities in the area, including natural gas, electricity, water, sewer, telephone and fiber-optic services were destroyed. The damages suffered by the residents of Keystone Drive and the Authority total in the millions of dollars.

3. In an effort to remediate the subject site, on June 3, 2015, the Authority board members voted to approve a contract with Schnabal Contracting to remove portions of the failure of the subject hillside. The first phase of this project will cost nearly five million dollars. The plan sheet for the stabilization project is attached hereto as Exhibit A. Both the Department of the Army, Corps of Engineers, and the West Virginia Department of Environmental Protection have confirmed that permits are not required to perform the remediation work. *See* Exhibit B and C.

4. Recognizing its duty to preserve evidence, the plaintiff seeks Court approval, and a finding of reasonableness, of the attached preservation protocol: Exhibit D. This protocol provides all parties to the action the opportunity to obtain evidence reasonably calculated to lead to the discovery of admissible evidence.

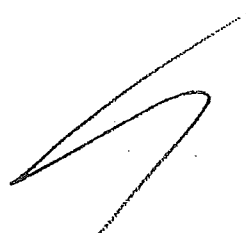
5. The plaintiff has provided notice of the instant motion to all identifiable defendants in this action.

6. Should this Court deny the instant motion, the plaintiff will be irreparably harmed. Failure to remediate the site will result in the potential loss of flights at Yeager Airport resulting in the loss of income to the Authority and the loss of travel options to West Virginia consumers. Failure to remediate the site could possibly result in further property damage and personal injury to those homes and persons situated below the site. Correspondingly, the failure to provide defendants the opportunity to inspect and test the area before or during remediation will result in allegations of spoliation of evidence. There is no other relief or mechanism available to the plaintiff to accomplish the goals of mitigating its damages and preserving evidence.

**WHEREFORE**, the plaintiff prays that this Court approve the attached preservation protocol, Exhibit D, find it reasonable and proper, and award other such relief as deemed equitable and just.

**CENTRAL WEST VIRGINIA  
REGIONAL AIRPORT AUTHORITY, INC.,**

By Counsel,



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and

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[mbarney@bbjlc.com](mailto:mbarney@bbjlc.com)

# CENTRAL WEST VIRGINIA REGIONAL AIRPORT AUTHORITY

## CHARLESTON, WEST VIRGINIA

### EMERGENCY RUNWAY 5 SAFETY AREA & SLOPE MITIGATION

#### CONTRACT NO. 2015-03



1380 Wilmington Pike, Suite 100  
West Chester, PA 19382  
Phone: 610-698-6066  
Fax: 610-696-7771  
schnabel-eng.com

CONTACT PERSON:  
ALLEN CADDEN, P.E., D.GE  
610-698-6066  
acadden@schnabel-eng.com

BID COPY

#### DRAWING INDEX

SHEET NO.	DESCRIPTION
1	SITE PLAN (11-1007)
2	CONSTRUCTION PLAN (11-1008)
3	CONSTRUCTION PLAN (11-1009)
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100	CONSTRUCTION PLAN (11-1106)

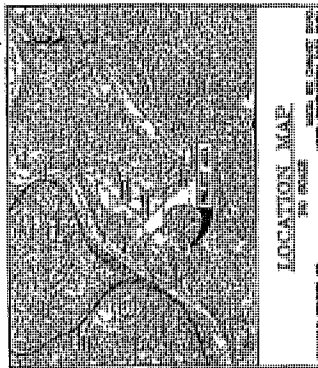


EXHIBIT A



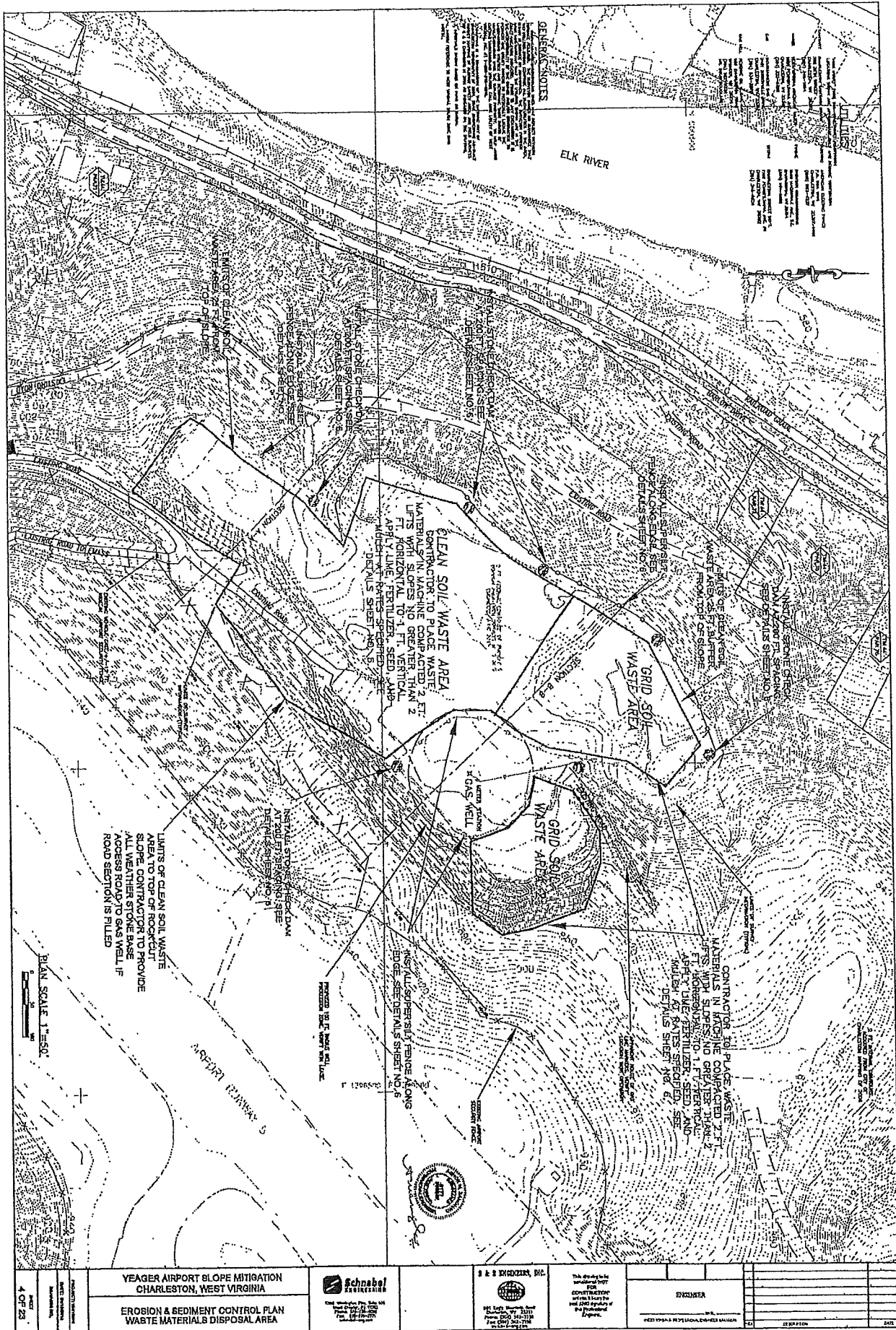




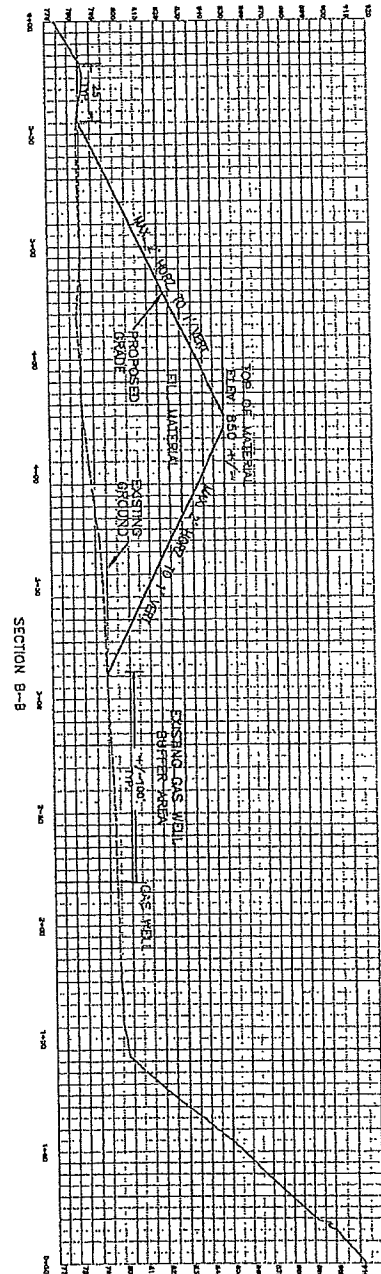
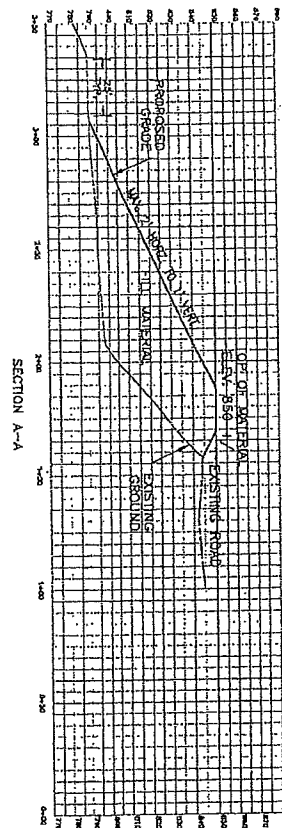












PLAN SCALE 1"=20'

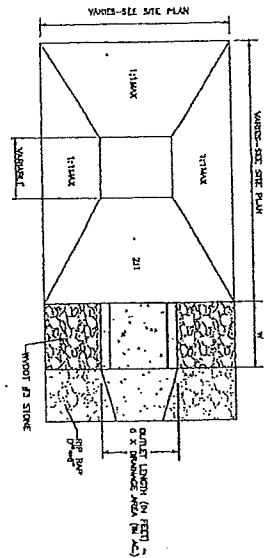


<p>5 OF 23</p>	<p>YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA</p> <p>EROSION &amp; SEDIMENT CONTROL PLAN WASTE MATERIALS DISPOSAL SECTIONS</p>	<p><b>Schnabel</b> ENGINEERS</p> <p>1000 West Virginia Ave., Suite 100 Martinsburg, WV 26151 Tel: 304-263-1111 Fax: 304-263-1112</p>	<p><b>S &amp; S ENGINEERS, INC.</b></p> <p>1000 West Virginia Ave., Suite 100 Martinsburg, WV 26151 Tel: 304-263-1111 Fax: 304-263-1112</p>	<p>The Applicant has been approved for construction with the exception of the proposed design.</p>	<p><b>ENGINEER</b></p> <p>REGISTERED PROFESSIONAL ENGINEER</p>	<p>DESCRIPTION</p>
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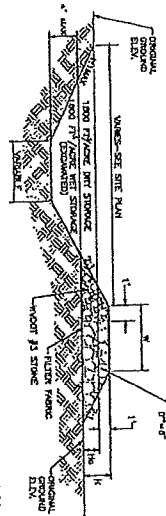
## EROSION AND SEDIMENT CONTROL STEPS

the 1990s, the number of people in the United States who are obese has increased by 50% (1). Obesity is a risk factor for a number of chronic diseases, including type 2 diabetes, coronary heart disease, and stroke (2). The prevalence of obesity in the United States is estimated to be 30% (3). The prevalence of obesity in the United Kingdom is estimated to be 25% (4). The prevalence of obesity in the United States is estimated to be 30% (3). The prevalence of obesity in the United Kingdom is estimated to be 25% (4). The prevalence of obesity in the United States is estimated to be 30% (3). The prevalence of obesity in the United Kingdom is estimated to be 25% (4).

*(The following text is extremely faint and largely illegible due to poor scan quality. It appears to be a list or index of names and dates.)*

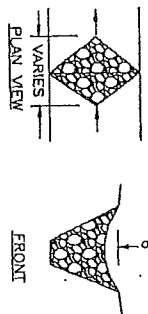


PLAN VIEW OF SEDIMENT TRAP

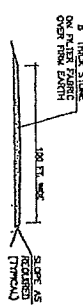


SECTION A-A OF SUBJECT

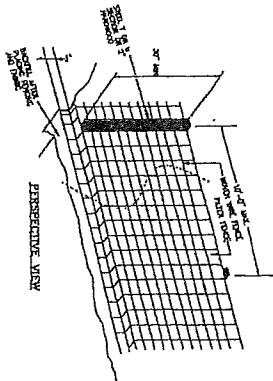
TEMPORARY SEDIMENT TRAP  
NOT TO SCALE



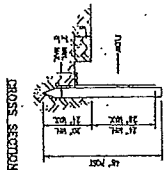
STONE DITCH CHECK DETAIL



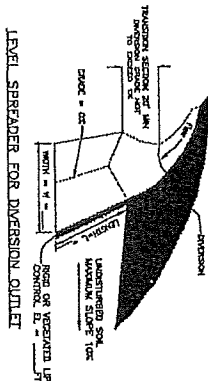
EMPLOYEE PARKING AREA



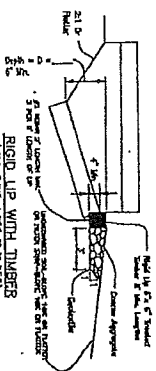
## PERSPECTIVE VIEW



## CROSS-SECTION



LEVEL SPREADER FOR DIVERSION OUTLET



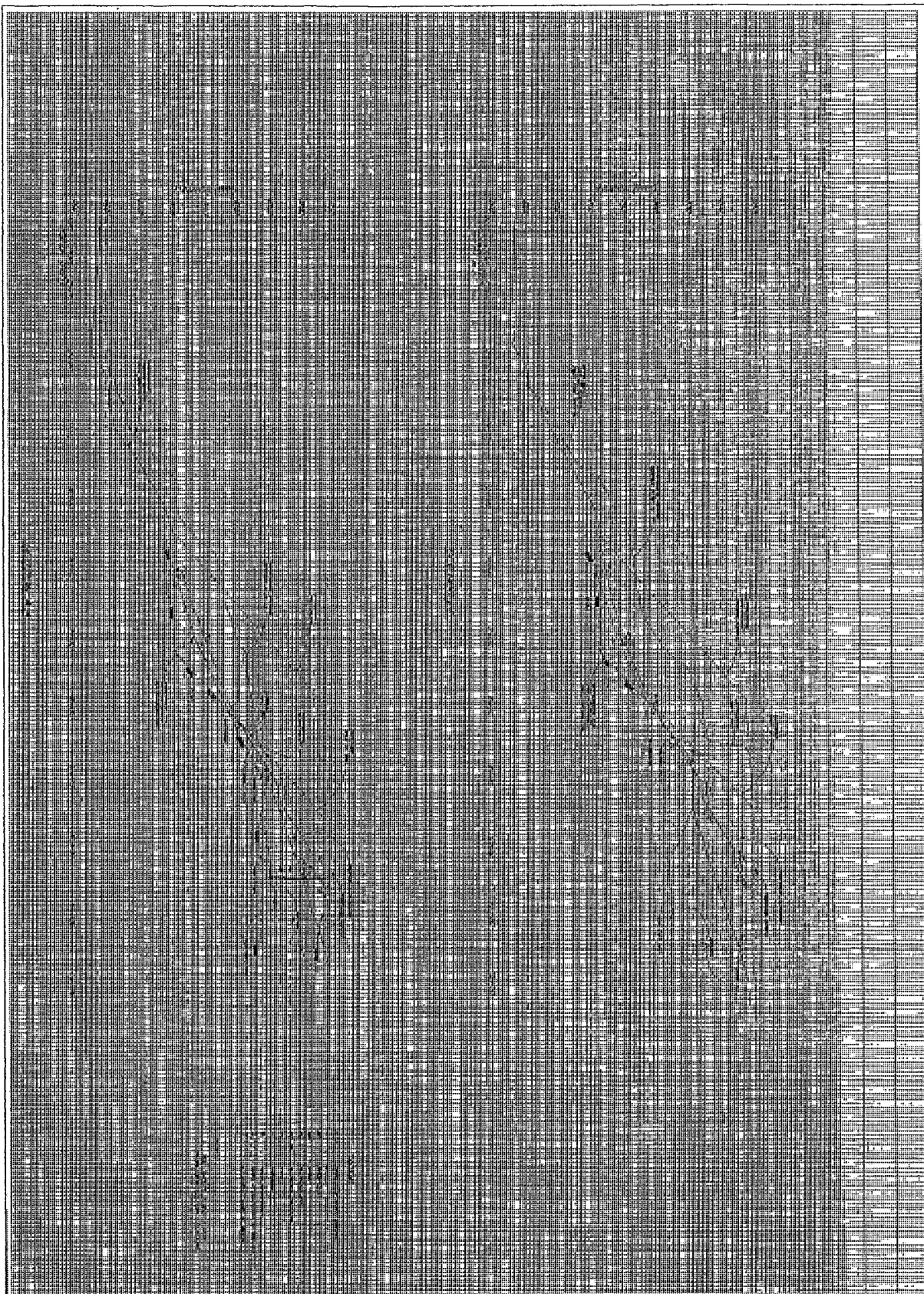
RIGID LIP WITH TIMBERS

SILT FENCE DETAIL

### LEVEL SPREADER DETAIL

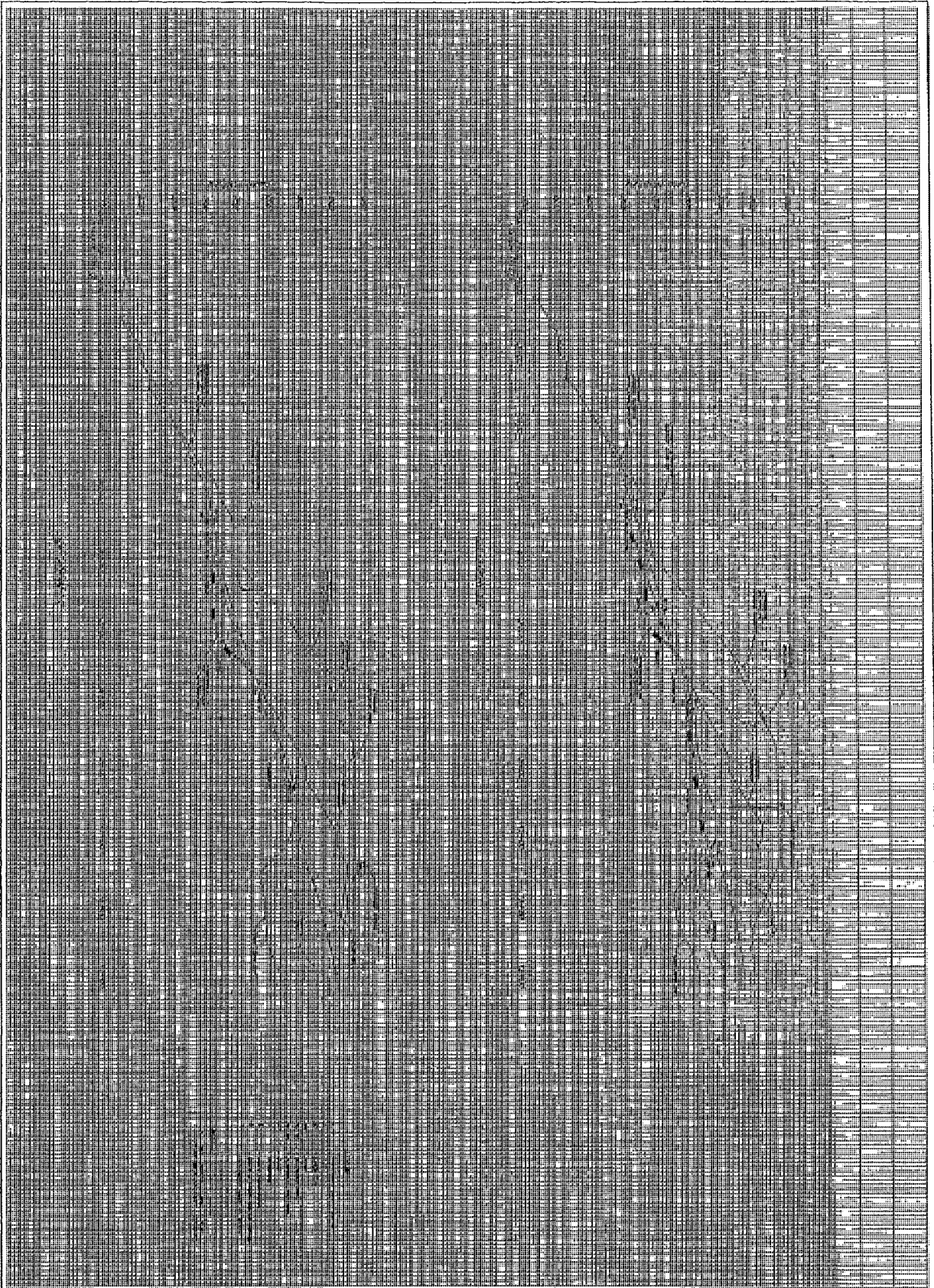






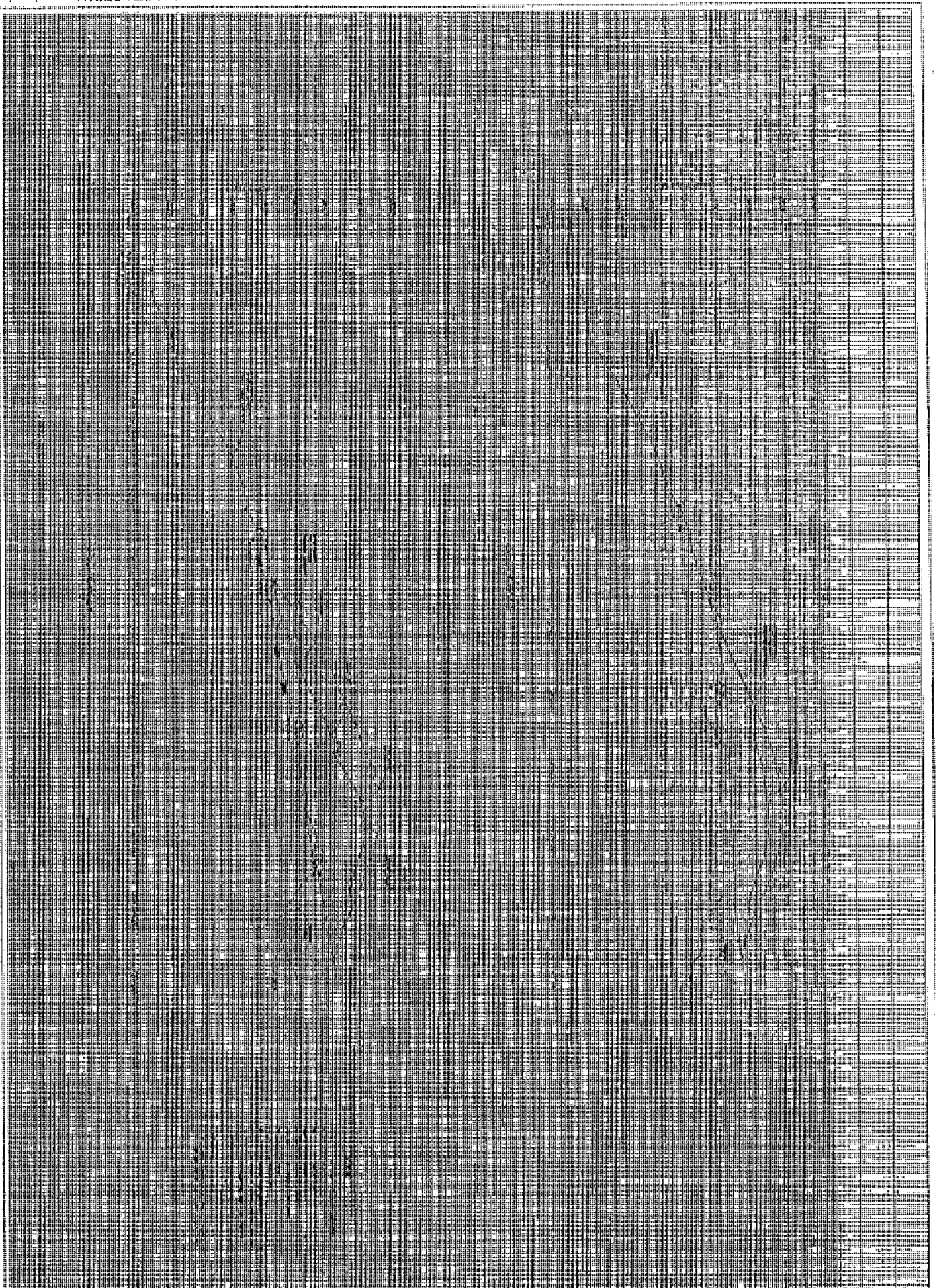


8 OF 23 SHEET DATE: 08/05/15 DRAWN BY: [Signature]	YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA		This drawing to be printed on 24" x 36" paper. All dimensions and notes shall be in feet and inches.		[Signature] [Title]	[Title]	[Title]
	MITIGATION SECTIONS A-A, L1						



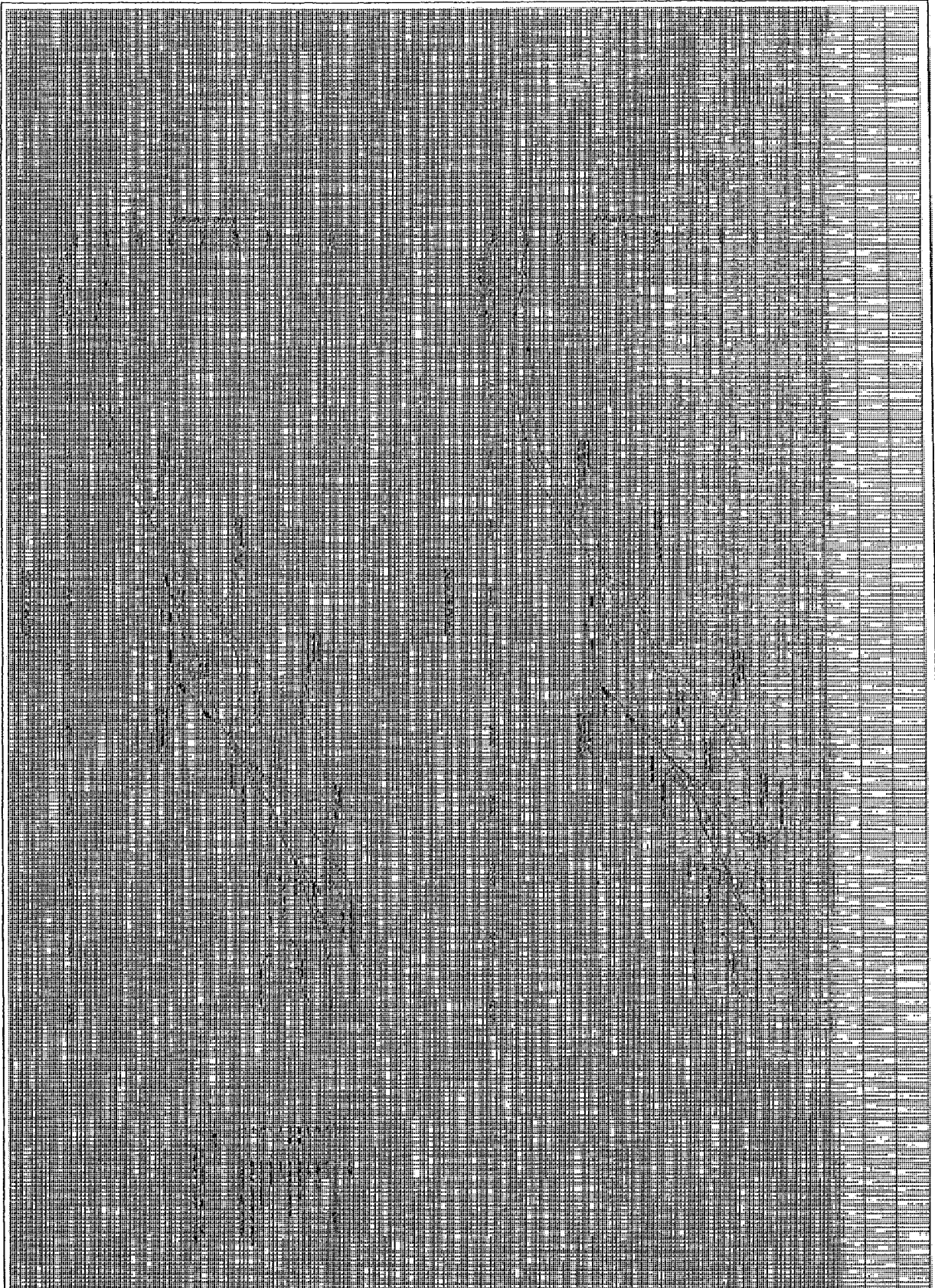


52-30-8 Zoning	Date Issued 10/15/14 Project 12345678	YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA	 1000 Virginia Ave., Suite 100 Charleston, WV 25301 Phone: 304.761.1234 Fax: 304.761.1235	This drawing is to be used for CONSTRUCTION and is not to be used for any other purpose without the written consent of the Engineer.	 T. B. B. L. Professional Engineer State of West Virginia	Date 10/15/14	Project 12345678	Sheet 1 of 1
		MITIGATION SECTIONS L2, L3						



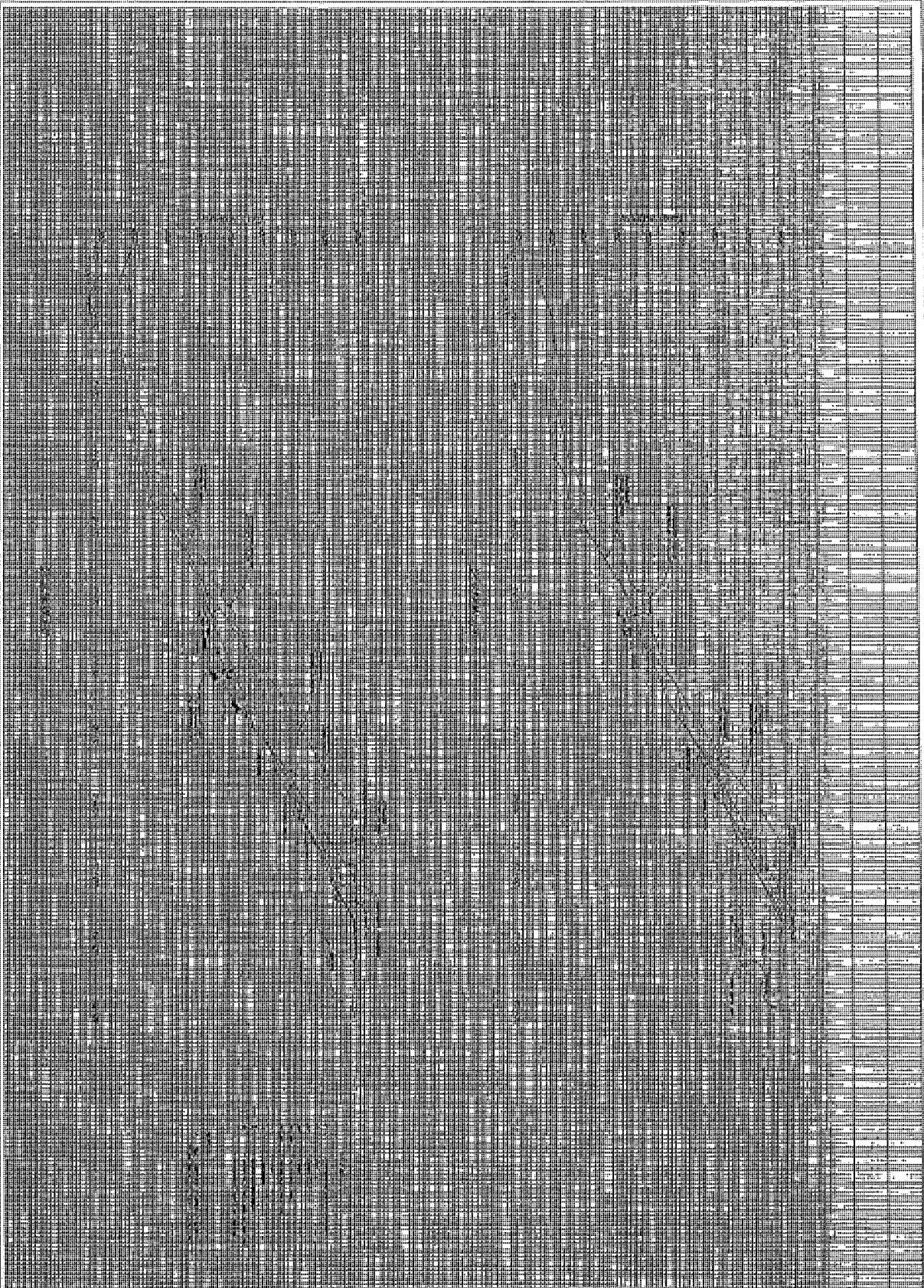
	
<p>YANKEE AIRPORT DEVELOPMENT CHARLESTON, WEST VIRGINIA</p>	
<p>MINIATION REGIONAL, LLC</p>	
	
	







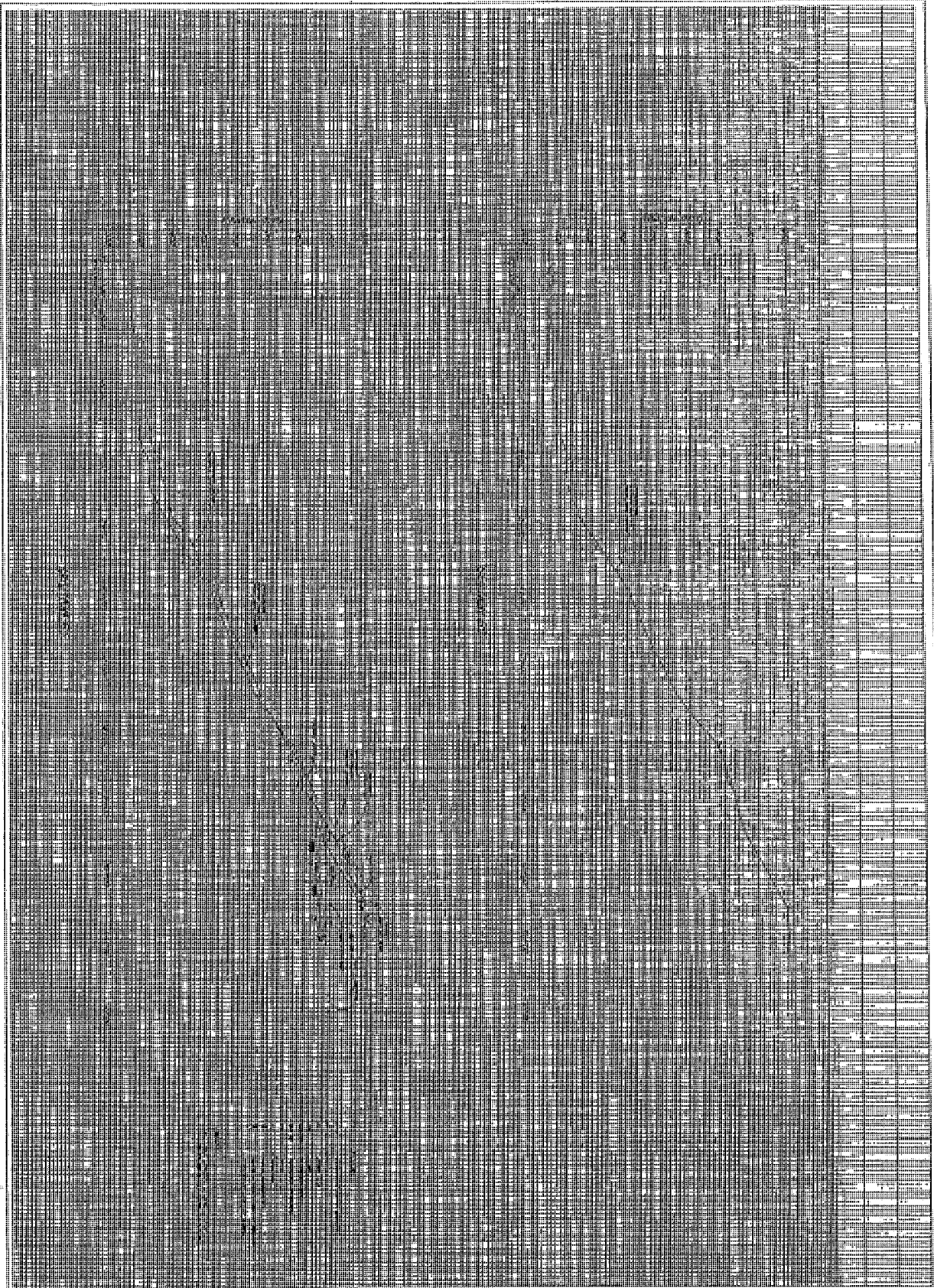
11 OF 28	PROJECT: YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA DATE: 08/05/15 DRAWN BY: [Signature]	 Schnabel ENGINEERING 1100 West Virginia Ave., Suite 100 Martinsburg, WV 26150 Phone: 304-251-2700 Fax: 304-251-2701	This drawing is to be used for construction only. It is not to be used for any other purpose without the written consent of the Engineer.	Drawn by: [Signature]	Checked by: [Signature]	Reviewed by: [Signature]
				DATE: 08/05/15	DATE: 08/05/15	DATE: 08/05/15






YERGEN AIRPORT EROSION MITIGATION CHARLESTON, WEST VIRGINIA							
MITIGATION PROPOSAL NO. 104							



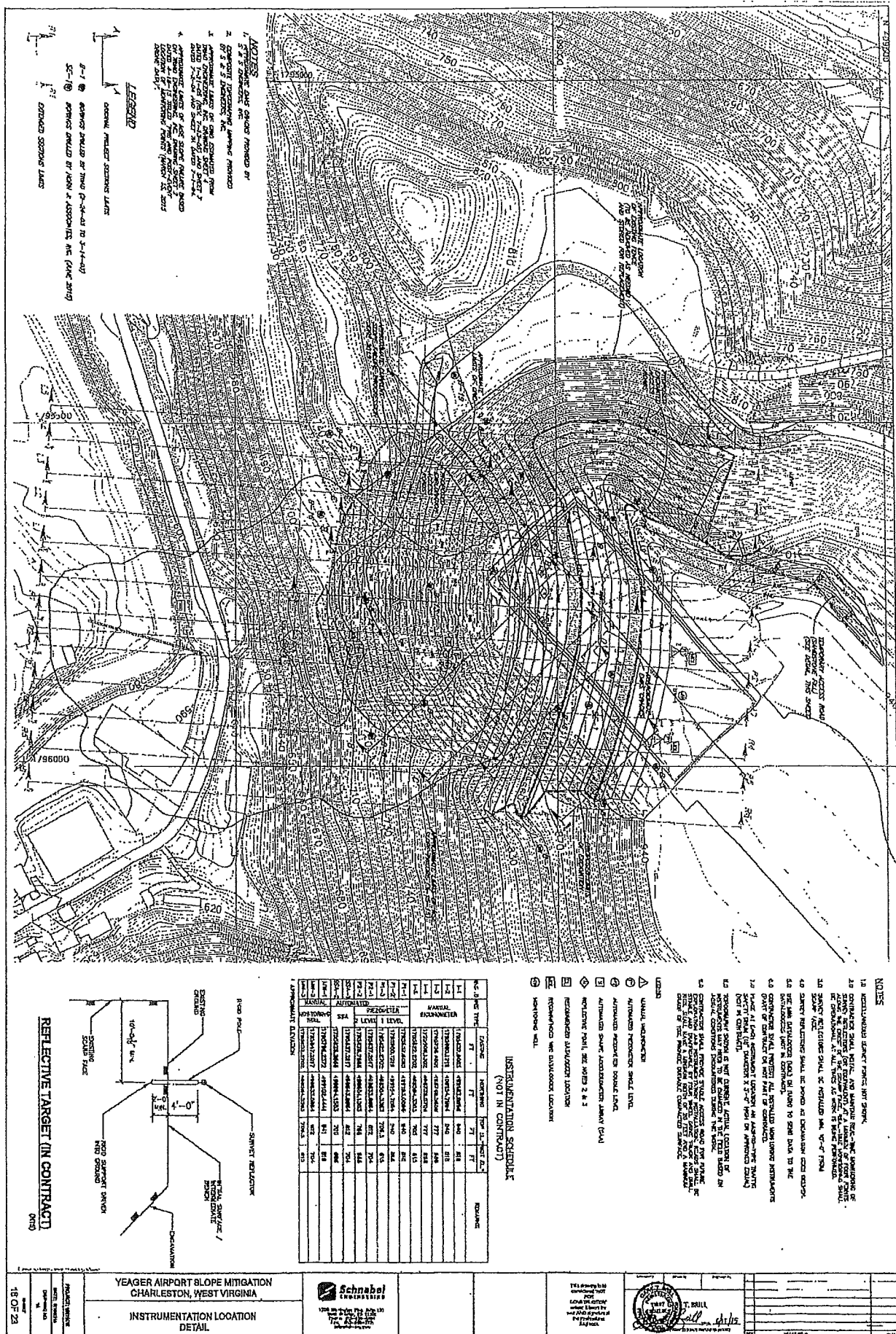


YEAAGER AIRPORT SLOPE INDICATION CHARLESTON, WEST VIRGINIA				The County of Jefferson West Virginia Department of Transportation					
MINIATURE SECTION 24, 25									

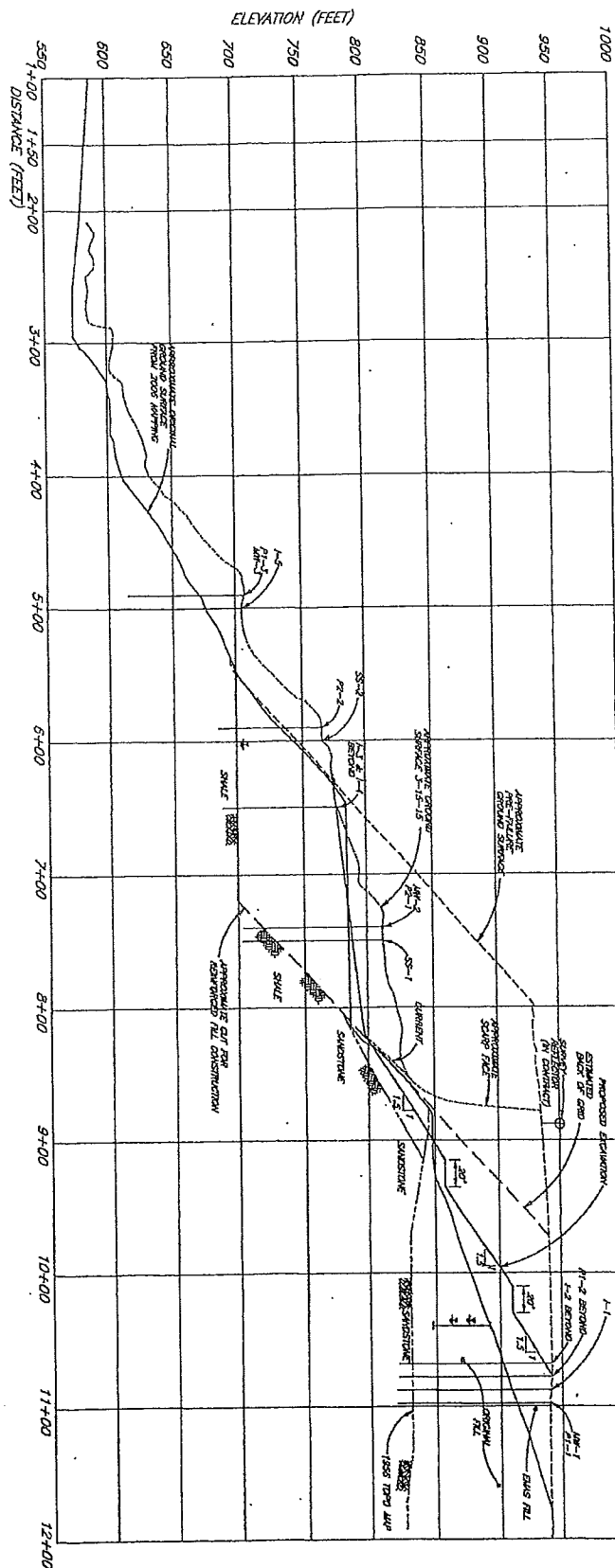






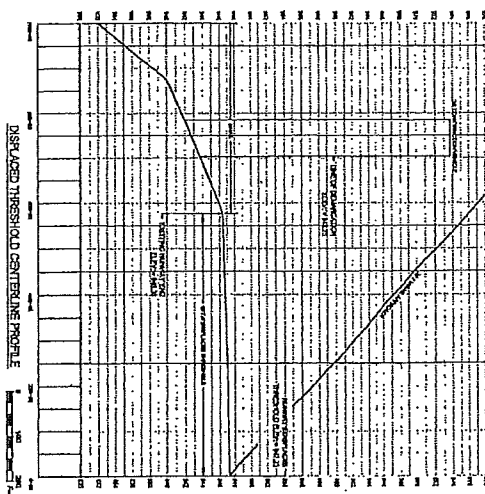
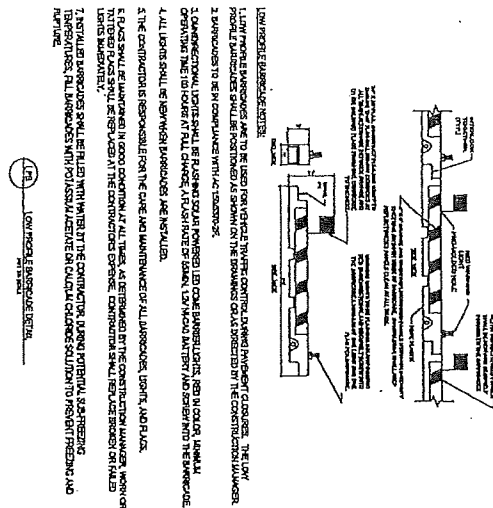
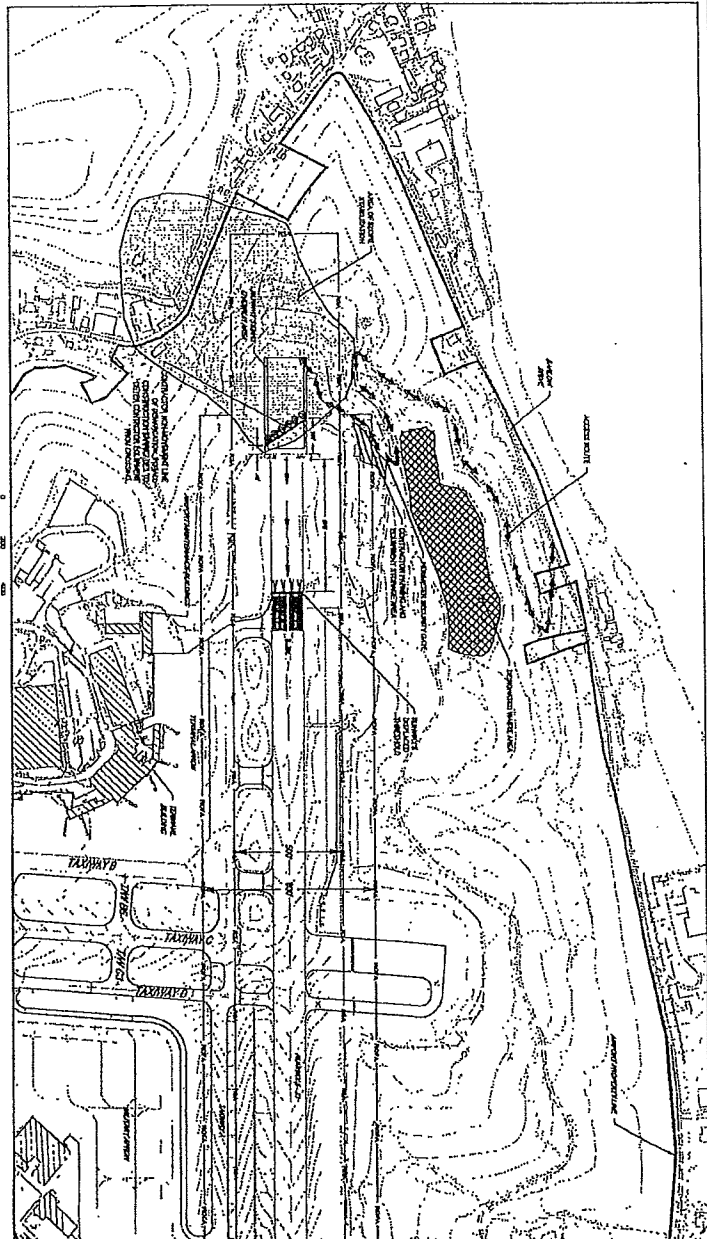
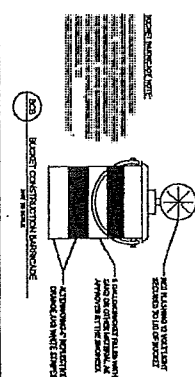


INSTRUMENTATION SECTION



INSTRUMENTS SHOWN NOT IN CONTRACT, EXCEPT AS NOTED

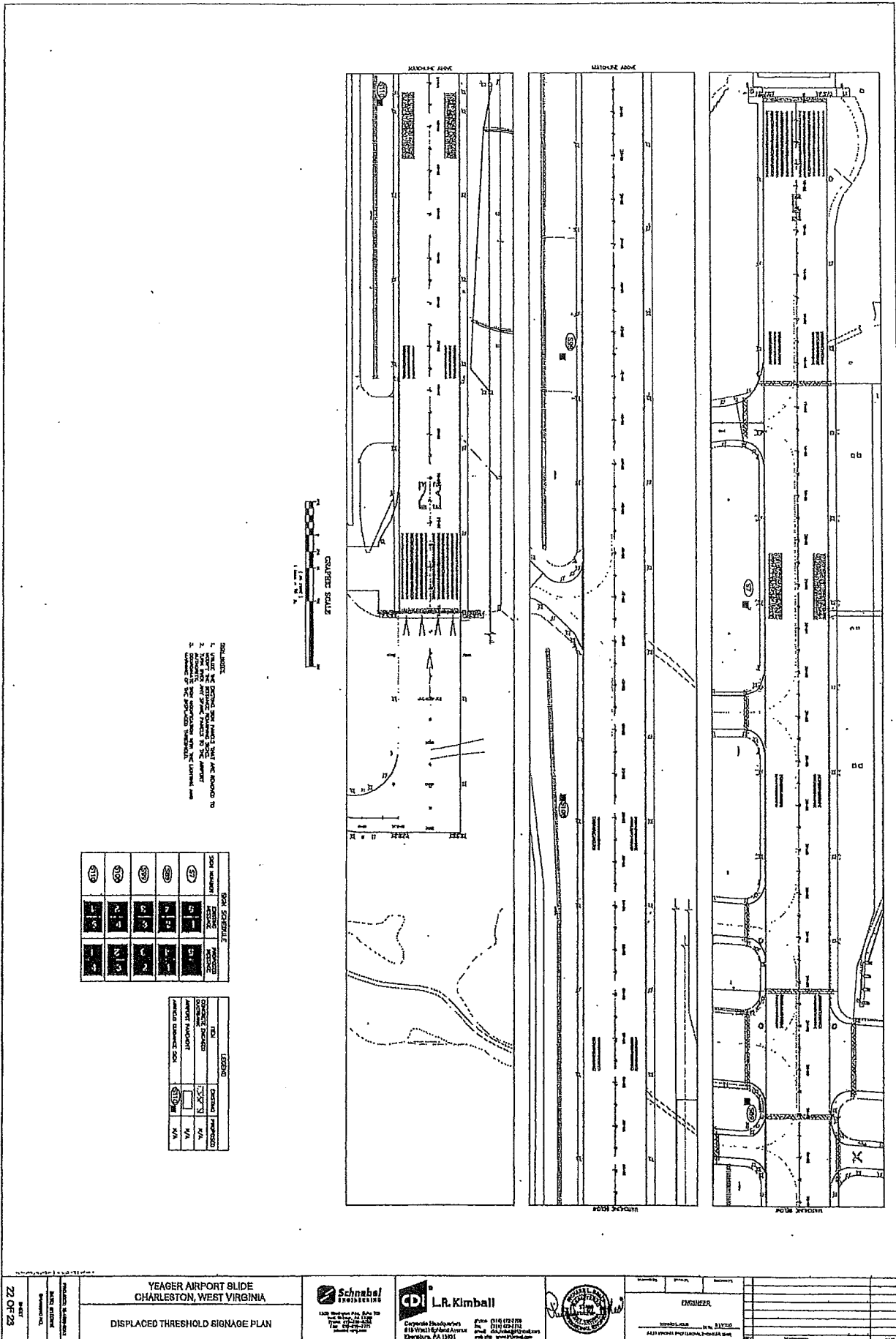


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DEPARTMENT OF THE ARMY  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

JUN 22 2015

REPLY TO  
ATTENTION OF:

Regulatory Division  
North Branch  
LRH-200100088-ELK-Unnamed Tributary Elk River

**APPROVED JURISDICTIONAL DETERMINATION  
NO PERMIT REQUIRED**

Mr. Richard A. Atkinson, Airport Director  
Central West Virginia Regional Airport Authority  
Yeager Airport  
100 Airport Road, Suite 175  
Charleston, West Virginia 25311

Dear Mr. Atkinson:

I refer to a request dated June 18, 2015, submitted on your behalf by Heritage Technical Associates, Inc., requesting an approved jurisdictional determination (JD) for three potentially non-jurisdictional areas located on property adjacent to the Runway 5 Safety Area at the Yeager Airport at Charleston, in Kanawha County, Ohio. You have also requested the United States Army Corps of Engineers (Corps) review your proposal for possible Department of the Army (DA) permit requirements. The request has been assigned the following file number: LRH-200100088-ELK-Unnamed Tributary Elk River. Please reference the appropriate file number on all future correspondence related to this request.

The Corps' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act requires a DA permit be obtained prior to discharging dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 requires a DA permit be obtained for any work in, on, over or under a navigable water.

***Preliminary Jurisdictional Determination***

Based upon a review of the provided information and other information available to us, this office has determined the concrete channel and two erosional channels (1RT Erosional Channel and 2RT Erosional Channel) draining into the concrete channel, as depicted on the drawing titled *Runway 5 Safety Area and Slope Mitigation Areas Reviewed for the Presence of Jurisdictional Waters* and dated June 17, 2015, are not considered jurisdictional waters of the United States and thus are not subject to regulation under Section 404 of the Clean Water Act. This jurisdictional verification is valid for a period of five years from the date of this letter unless new information warrants revision of the delineation prior to the expiration date.

***EXHIBIT B***

-2-

A JD has not been completed for the areas noted as Elk Twomile Creek, UNT 1 of ETM, UNT 1 of ER, UNT 2 of ER, UNT 3 of ER and UNT 4 of ER on the drawing titled *Runway 5 Safety Area and Slope Mitigation Areas Reviewed for the Presence of Jurisdictional Waters* and dated June 17, 2015 because these areas were located outside of the area of interest. This letter contains an approved JD specifically for the non-jurisdictional features noted above. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR 331.

Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Great Lakes and Ohio River Division Office at the following address:

Appeals Review Officer  
Great Lakes and Ohio River Division  
550 Main Street RM 10524  
Cincinnati, Ohio 45202-3222  
Phone: (513) 684-2699  
Fax: (513) 684-2460


In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by July 28, 2015. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

***No Permit Required***

Based upon the provided information and a pre-application meeting conducted on June 18, 2015, you propose to perform remedial measures to stabilize a slip area adjacent to Runway Safety Area 5. Unconsolidated fill material in the slip area will be excavated and deposited in areas absent of waters of the United States. In addition, a channel will be constructed through uplands. We have determined your proposal will neither result in discharge of dredged or fill material into waters of the United States nor involve work in, on, over or under a navigable water of the United States. Therefore, no DA permit is required from this office for the proposed activities.

We appreciate your concern for our nation's aquatic resources. If you have any questions concerning the above information, please contact Ms. Teresa Spagna of the North Branch at 304-399-5710, at the above address or by email at [teresa.d.spagna@usace.army.mil](mailto:teresa.d.spagna@usace.army.mil).

Sincerely,

  
Ginger Mullins, Chief  
Regulatory Division

Enclosures

-3-

Copy Furnished:

Mr. Lantz Rankin  
Heritage Technical Associates, Inc.  
Post Office Box 4510  
Chapmanville, West Virginia 25508



**Central West Virginia Regional Airport Authority**

John D. Rockefeller IV Terminal  
100 Airport Road, Suite 175 • Charleston, WV 25311-1080  
Phone: 304-344-8033 Fax: 304-344-8034  
E-Mail: fly@yeagerairport.com www.yeagerairport.com



**June 24, 2015**

**Mr. Scott Mandirola, Director**  
Division of Water and Waste Management  
West Virginia Department of Environment Protection  
601 57th Street SE  
Charleston, WV 25304

**RE: Emergency Related Construction at the Yeager Airport**

**Dear Mr. Mandirola:**

Central West Virginia Regional Airport Authority ("CWVRAA") is seeking to initiate emergency measures in order to remove unstable debris and provide an engineered flow path for Elk Two Mile Creek in the event that field conditions cause the current channel to not function adequately. In order to timely initiate these measures, CWVRAA is requesting immediate authorization for construction activities needed to respond to this public emergency.

In March of 2015, at Yeager Airport in Charleston, West Virginia, a large portion of an engineered fill, associated with the Runway 23 Engineered Materials Arrestor System, slid into Elk Two Mile Creek. The fill material blocked Elk Two Mile Creek causing local flooding. Currently, for safety reasons, CWVRAA needs to timely begin to perform remediation actions regarding unconsolidated fill material that remains within the fill area and the current channel of Elk Two Mile Creek. Although several months have passed since the initial failure of the fill, the remaining unstable fill material and the potential for the current channel of Elk Two Mile Creek to be filled require immediate remediation action. In the time since the initial failure, CWVRAA has selected the companies which will be designing and constructing the said remediation. The complexity of the situation requires that the remediation alternatives be closely analyzed in order to choose the most efficient and safest alternative.

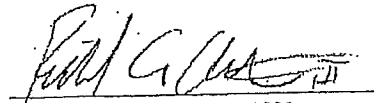
Once the design of the remediation project is finalized, said remediation construction will need to be implemented in a timely manner. In order to allow the

WEST VIRGINIA'S GATEWAY

**EXHIBIT C**

remediation to occur without administrative delay, CWVRAA is requesting immediate authorization to conduct the necessary earth disturbance activities. In accordance with the eligibility for emergency related construction policy, located in Section 11.1 of the Fact Sheet, Rationale, and Information for General; NPDES Permit for Construction Stormwater, WV0115924 issued on December 5, 2012, CWVRAA is requesting immediate authorization for construction activities needed to respond to this public emergency. Within thirty (30) calendar days after commencing earth-disturbance activities, a Notice of Intent and a stormwater pollution prevention plan will be submitted to West Virginia Department of Environmental Protection. If you have any further questions, please contact me at 304-344-8033 or email me at [rick@yeagerairport.com](mailto:rick@yeagerairport.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Atkinson", is written over a horizontal line.

**Richard Atkinson III**  
*Director, Yeager Airport*

c: Mr. Lantz Rankin

YEAGER AIRPORT  
SLOPE MONITORING  
RUNWAY 5

**FORENSIC EVALUATION PROGRAM – PHASE 1**

DATE: 6/22/15

**Project Name:** Yeager International Airport – Runway 5  
**Project Location:** Charleston, West Virginia  
**Subject:** Runway 5 - Reinforced Soil Slope Slide – Phase 1 Stabilization – Proposed Forensic Sampling and Testing Program

The following proposed forensic evaluation program has been developed specifically with respect to only the phase 1 slide stabilization measures developed by Schnabel Engineering Consultants. A second phase of the forensic evaluation program will be developed and implemented after the head scarp has been stabilized and safe access to the failed mass debris field is provided. This proposed program is subject to review and comment by parties named in the litigation.

**EMAS**

- Preserve 4 intact 20 inch thick EMAS blocks for future possible testing.
- The EMAS blocks will be stored on site at an agreed upon location by the Airport Authority.

**Asphalt Pavement**

- Survey, map and photograph tension cracks in asphalt pavement below EMAS. Measure thickness of asphalt at crack locations.

**Base Course Material**

- Obtain bulk samples (2 – 5 gallon buckets) of base coarse aggregate underneath the asphalt pavement, at two locations, one each on the east and west sides of the centerline of the EMAS.
- Perform gradation tests in accordance with ASTM D6913 Standard Test Methods for Particle-Size Distribution (Gradation) of Soils Using Sieve Analysis.

**Reinforced and Retained Fill**

- Sample frequency – approximately every 12 feet vertically (4 x 3-foot reinforcement spacing) and in both the sandstone based fill and in the shale based fill. Take additional samples at any observed fill anomalies.
- Sample location – one each on the east and west sides of the EMAS centerline. Record location of each sample.

BY: JGC

Sheet 1 of 4

**INNOVATIVE GEOTECHNICAL SOLUTIONS**  
7445 Arlington Road  
Bethesda, MD 20184



***EXHIBIT D***

YEAGER AIRPORT  
SLOPE MONITORING  
RUNWAY 5

**FORENSIC EVALUATION PROGRAM – PHASE 1**

DATE: 6/22/15

- Sample size – three 5 gallon buckets at each location, If sandstone and clay/shale are both present (below and above reinforcement layer) collect 3 bucket samples of each. Do not include material over ¾-inch size, screen on site as necessary. Document, weigh, and photograph oversize material from each location. Samples shall be field described during sampling. Blending of material in the sample buckets will be required before testing.
- Perform the following tests:
  - Gradation tests (ASTM D6913)
  - Atterberg Limits (D4318 - 10e1 Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils)
  - Proctor Density tests (ASTM D698 Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort)
  - Triaxial Compression tests (D4767 Standard Test Method for Consolidated Undrained Triaxial Compression Test for Cohesive Soils)
  - Residual Shear strength testing using sufficient stress reversals to obtain large strains as discussed in the COE laboratory testing procedure EM 1110-2-1906
  - One-dimensional consolidation tests (ASTM D2435 Standard Test Methods for One-Dimensional Consolidation Properties of Soils Using Incremental Loading)
  - Permeability tests (ASTM D2434-68 Standard Test Method for Permeability of Granular Soils).
- The frequency of the above listed tests will be a function of the variability of the soil samples obtained during the sampling process and variability of early test results, as a minimum at least three of each test will be performed.
- In-situ density testing – perform sand cone density testing and/or Nuclear Density Testing every 6 feet vertically at three locations during the excavation (D1556 - 15 Standard Test Method for Density and Unit Weight of Soil in Place by Sand-Cone Method and ASTM D6938 - 10 Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth)). The test method will be dependent on the amount of large particles in the fill. Excavation at the test level shall be performed with a smooth bucket blade to minimize disturbance of the in-situ soil. Use hand shovel to excavate the last 3 inches to the test elevation.

BY: JGC

Sheet 2 of 4

**INNOVATIVE GEOTECHNICAL SOLUTIONS**  
7445 Arlington Road  
Bethesda, MD 20184



YEAGER AIRPORT  
SLOPE MONITORING  
RUNWAY 5

**FORENSIC EVALUATION PROGRAM -- PHASE 1**

DATE: 6/22/15

- In-situ moisture – obtain samples for moisture testing at each density test location and wherever there are obvious wet areas (ASTM D2216 - 10 Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass).
- In-situ Large Scale Density Testing. Frequency – one test in per 12 foot vertically. Dimensions – 2-foot diameter ring and two lift heights thickness in sandstone based fill and one lift height thickness in the shale based fill. Perform in-situ water replacement volume measurement. Gradation test and weight measurement of all samples.

**Geogrid Retrieval for Testing**

- Geogrid sampling frequency – every 12 feet vertically. Sample at two locations at each elevation, one in side fill with 10XT geogrid reinforcement and one in front fill with 20XT geogrid reinforcement.
- At the terminal end of the geogrid expose an area of grid that is a roll width (12 feet) wide and a minimum of 10 feet long for observation and sampling. The excavation to expose the geogrid shall be made with a smooth bucket edge to within 2 inches (or greater) above the geogrid. The final 2 inches shall be excavated by hand, to minimize damaging the geogrid.
- Photographic documentation of the condition of the geogrid shall be performed
- Two 6 feet wide by 10 feet long samples of the geogrid shall be obtained at each exposed location, if Miragrid 10XT and 20XT are both exposed at any location samples of each shall be obtained
- Perform wide width tensile testing (5 at each sample location) in accordance with ASTM D6637 Standard Test Method for Determining Tensile Properties of Geogrids by the Single or Multi-Rib Tensile Method, Method B.

**Geogrid Observations and Additional Sample Retrieval**

- At the terminal end of the geogrid expose an area of grid that is approximately 20 feet wide and 30 feet long, or greater, for observation and sampling. The excavation to expose the geogrid shall be made with a smooth bucket edge. Geogrid overlap observation frequency – every 12 feet vertically.
- Photographic documentation of the condition and overlap of the geogrid shall be performed.
- Overlap geometry and dimensions shall be measured and recorded.

BY: JGC

Sheet 3 of 4

**INNOVATIVE GEOTECHNICAL SOLUTIONS**  
7445 Arlington Road  
Bethesda, MD 20184



YEAGER AIRPORT  
SLOPE MONITORING  
RUNWAY 5

**FORENSIC EVALUATION PROGRAM – PHASE 1**

DATE: 6/22/15

- Once the scarp has been lowered to a safe height, excavate to expose the geogrid at the face using a smooth bucket edge (frequency of 3 to 6 feet vertically). Expose width of geogrid of 8 feet. Tear geometry, in relation to machine direction (MD) and cross machine direction (XMD), will be photographed and recorded. Observe at two locations at each elevation, one in side fill with 10XT geogrid reinforcement and one in front fill with 20XT geogrid reinforcement.
- Additionally, once the scarp has been removed and it is safe to work in the debris field, large panels (minimum 6 feet in length) of geogrid that are exposed and readily removable will be mapped, then the exposed panels will be removed, tagged, and stored for possible future testing.

**Photographic Documentation and Mapping**

- During the phase 1 stabilization of the head scarp the following photographic documentation and mapping shall be performed:
  - Where rock surface is exposed document elevation and extent (3D mapping), type and condition rock, bedding plane geometry, etc.
  - Location and elevation of 1969 Airport Extension fill
  - Any wet areas exposed during the excavation
  - Reinforced and retained backfill demarcation.
  - Document preparation (ex., stripping, benching, etc.) at the interface between the old existing fill and new (retained backfill).

BY: JGC

Sheet 4 of 4

**INNOVATIVE GEOTECHNICAL SOLUTIONS**  
7445 Arlington Road  
Bethesda, MD 20184



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022  
Judge Webster

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,

LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
a Pennsylvania corporation,  
AIG AEROSPACE INSURANCE SERVICES, INC.,  
a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURANCE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

### **CERTIFICATE OF SERVICE**

On June 24, 2015, the undersigned counsel does hereby certify that service of the attached **EMERGENCY MOTION TO PRESERVE REAL EVIDENCE** has been made upon named Defendants by service through the West Virginia Secretary of State with the Complaint and Amended Complaint.

---

Anthony J. Majestro (WVSB 5165)  
J.C. Powell (WVSB 2957)  
Powell and Majestro, PLLC  
405 Capitol Street, Suite P-1200  
Charleston, West Virginia 25301  
Phone: 304-346-2889  
Fax: 304-346-2895  
amajestro@powellmajestro.com



# **INCOMING MAIL**

Office of the Secretary of State  
Building 1 Suite 157-K  
1900 Kanawha Blvd E.  
Charleston, WV 25305



2015 JUL -6 AM 10:57  
CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**Natalie E. Tennant**  
Secretary Of State  
State Of West Virginia  
Phone: 304-558-6000  
866-767-8683  
Visit us online:  
[www.wvsos.com](http://www.wvsos.com)

Cathy Gatson  
Kanawha County Courthouse  
111 Court Street  
Charleston, WV 25301-2500

**Control Number:** 66229

**Defendant:** TRIAD ENGINEERING, INC.  
10541 TEAYS VALLEY ROAD  
SCOTT DEPOT, WV 25560 US

**Agent:** TINA MCPHAIL

**County:** Kanawha

**Civil Action:** 15-C-1022

**Certified Number:** 92148901125134100000711268

**Service Date:** 6/30/2015

I am enclosing:

**1 summons and amended complaint**

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

*Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, **not to the Secretary of State's office.***

Sincerely,

A handwritten signature in cursive script that reads "Natalie E. Tennant".

Natalie E. Tennant  
Secretary of State

16-17

**SUMMONS**  
**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia Corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware Corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware Corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,

FILED  
2015 JUL -6 AM 10:57  
CATHY S. SULLIVAN  
KANAWHA COUNTY CIRCUIT COURT

FILED  
2015 JUL -6 AM 10:57  
CATHY S. SULLIVAN  
KANAWHA COUNTY CIRCUIT COURT

HDI-GERLING AMERICA INSURANCE COMPANY, ,  
A Illinois corporation,  
LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
A Pennsylvania corporation,  
AIG AEROSPANCE INSURANCE SERVICES, INC.,  
A Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
An Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
A Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation  
JOHN DOE INSURNACE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANY 4-20,  
And JOHN DOES NOS 1 THROUGH 20,

Defendants.

**To the above-named Defendant: TRIAD ENGINEERING, INC.  
c/o Tina McPhail  
10541 Teays Valley Road  
Scott Depot, WV 25560**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Bucci Bailey & Javins, L.C., plaintiff's attorney, whose address is Post Office Box 3712, Charleston, West Virginia, 25337, an answer, including any related counterclaim you may have, to the amended complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you

fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 6-18-15

Cathy S. Gatson, Clerk

Clerk of the Court

*B. Crigh*



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022  
Judge Kaufman

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,

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2015 JUN 18 AM 11:21  
CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
a Pennsylvania corporation,  
AIG AEROSPACE INSURANCE SERVICES, INC.,  
a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURNACE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

**AMENDED COMPLAINT**

The plaintiff, Central West Virginia Regional Airport Authority, Inc., for its complaint,  
hereby alleges as follows:

**PARTIES**

1. Plaintiff Central West Virginia Regional Airport Authority, Inc., (“the Authority”) is a political subdivision of the State of West Virginia, governed by a board comprised of representatives of Kanawha, Putnam, Lincoln, Boone, and Nicholas Counties, and the City of Charleston. At all relevant times, plaintiff Authority owned and operated Yeager Airport in Charleston, Kanawha County, West Virginia.

2. Defendant Triad Engineering, Inc. (“Triad”) is a West Virginia corporation. Upon information and belief, its principal place of business is now in Pittsburgh, Pennsylvania. At all relevant times, Defendant Triad has been licensed to conduct and has been conducting business in the State of West Virginia. Triad provided design, engineering, supervision, inspection, monitoring, and advice with regard to the subject project discussed herein. Additionally, after completion of the subject project, defendant Triad continued to provide such services.

3. Defendant Cast & Baker Corporation (“Cast”) is a Pennsylvania Corporation with its principal place of business in Cannonsburg, Pennsylvania. At all relevant times, Defendant Cast has been licensed to conduct and has been conducting business in the State of West Virginia, and was the general contractor on the subject project. Cast provided design, engineering, supervision, inspection, monitoring, advice, construction work and other construction related services on the subject project. Additionally, after completion of the project, defendant Cast continued to provide such services.

4. Defendant Michael Baker International, Inc., a/k/a Michael Baker Corporation (“Michael Baker”) is a Delaware Corporation. Michael Baker designed and inspected the RSA and MSE system as described herein.

5. Defendant West Virginia Paving, Inc. (“WV Paving”) is a West Virginia corporation. Upon information and belief, its principal place of business is in Dunbar, Kanawha County, West Virginia. At all relevant times, Defendant WV Paving has been licensed to conduct and has been conducting business in the State of West Virginia. WV Paving provided paving services and products upon which an EMAS system, discussed herein, was installed on the subject project.

6. Defendant Senex Explosives, Inc. ("Senex") is a Pennsylvania corporation. At all relevant times, Defendant Senex has been licensed to conduct and has been conducting business in the State of West Virginia. Senex provided explosives and blasting services on the subject project.

7. Defendant Affordable Asphalt Maintenance Corporation ("Affordable Asphalt") is a West Virginia corporation. Upon information and belief, its principal place of business is in Mineral Wells, Wood County, West Virginia. At all relevant times, Defendant Affordable Asphalt has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant Affordable Asphalt installed the subject EMAS system discussed herein.

8. Defendant Engineered Arresting Systems Corporation ("Engineered Arresting") is a Delaware corporation. At all relevant times, Defendant Engineering Arresting has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant Engineering Arresting designed, sold, distributed and/or manufactured the EMAS system described herein and provided advice and expertise in the selection and installation of the EMAS system.

9. Defendant Royal Ten Cate (USA), Inc. ("Royal Ten") is a Delaware corporation. At all relevant times, Defendant Royal Ten has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant was the manufacturer and/or distributor of the geosynthetic materials utilized on the subject project including the Miramesh GR, and the Miragrid 10XT & 20XT.

10. Defendant Novel Geo-Environmental, LLC ("Novel") is a Pennsylvania corporation. At all relevant times, Defendant Novel has been licensed to conduct and has been

conducting business in the State of West Virginia. Defendant Novel provided quality-control services including geotechnical compaction testing and/or analysis for the subject project.

11. Defendant JMD Company, Inc., (“JMD”) is a Delaware corporation. At all relevant times, Defendant JMD has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant JMD distributed and/or modified the geosynthetic materials utilized on the subject product including the Miramesh GR and Miragrid 10XT & 20XT, and further provided advice and expertise in the selection and installation of the subject products.

12. Defendant Architects & Engineers Insurance Company (“Architects”) is a Delaware corporation. At all relevant times, Defendant Architects has been licensed to conduct and has been conducting business in the State of West Virginia.

13. Defendant Erie Insurance Group (“Erie”) is a Pennsylvania corporation. At all relevant times, Defendant Erie has been licensed to conduct and has been conducting business in the State of West Virginia.

14. Defendant Great American Insurance Company (“Great American”) is an Ohio corporation. At all relevant times, Defendant Great American has been licensed to conduct and has been conducting business in the State of West Virginia.

15. Defendant, Lancer Insurance Company (“Lancer”) is a Delaware corporation. At all relevant times, Defendant Lancer has been licensed to conduct and has been conducting business in the State of West Virginia.

16. Defendant, HDI-Gerling America Insurance Company (“HDI-Gerling”) is a Illinois corporation. At all relevant times, Defendant HDI-Gerling has been licensed to conduct and has been conducting business in the State of West Virginia.



17. Defendant Liberty Mutual Insurance Company (“Liberty”) is a Massachusetts corporation. At all relevant times, Defendant Liberty has been licensed to conduct and has been conducting business in the State of West Virginia.

18. Defendant Ohio Farmers Insurance Company (“Ohio”) is an Ohio corporation. At all relevant times, Defendant Ohio has been licensed to conduct and has been conducting business in the State of West Virginia.

19. Defendant Westfield Insurance Company (“Westfield”) is an Ohio corporation. At all relevant times, Defendant Westfield has been licensed to conduct and has been conducting business in the State of West Virginia.

20. Defendant, XL Insurance America, Inc. (“XL”) is an Delaware corporation. At all relevant times, Defendant XL has been licensed to conduct and has been conducting business in the State of West Virginia.

21. Defendant, New Hampshire Insurance Company (“New Hampshire”) is a Pennsylvania corporation. At all relevant times, Defendant New Hampshire has been licensed to conduct and has been conducting business in the State of West Virginia.

22. Defendant, AIG Aerospace Insurance Services, Inc. (“AIG Aerospace”) is a Georgia corporation. At all relevant times, Defendant AIG Aerospace has been licensed to conduct and has been conducting business in the State of West Virginia.

23. Defendant, Cincinnati Insurance Company (“Cincinnati”) is an Ohio corporation. At all relevant times, Defendant Cincinnati has been licensed to conduct and has been conducting business in the State of West Virginia.

24. Defendant, Travelers Indemnity Company (“Travelers”) is a Connecticut corporation. At all relevant times, Defendant Travelers has been licensed to conduct and has been conducting business in the State of West Virginia.

25. Defendant ACE American Insurance Company (“ACE”) is a Pennsylvania corporation. At all relevant times, Defendant ACE has been licensed to conduct and has been conducting business in the State of West Virginia.

26. Defendants John Doe Insurance Companies Nos. 1 through 20 are potentially unknown insurance companies or other entities.

27. Defendants John Doe Nos. 1 through 20 are potentially unknown defendants in this action who will be discovered during the course of discovery.

#### **JURISDICTION AND VENUE**

28. That at all times mentioned herein, the Defendants Triad, Cast, Michael Baker, WV Paving, Senex, Affordable Asphalt, Engineered Arresting, Royal Ten, Novel, Architects, Erie, Great American, HDI-Gerling, Lancer, Liberty, Ohio Farmers, Westfield, XL, New Hampshire and AIG Aerospace are now and/or were corporations doing business in Kanawha County, West Virginia.

29. Jurisdiction and venue are appropriate in the Circuit Court of Kanawha County, West Virginia, pursuant to W. Va. Code § 56-1-1, in that the events giving rise to this cause of action occurred in Kanawha County, West Virginia; one or more defendant does business in West Virginia; and plaintiff avails itself of the Circuit Court of Kanawha County, West Virginia, pursuant to the principles set forth in W. Va. Code §56-1-1 and W. Va. Code §56-1-1a.

30. The claims raised herein are claims under West Virginia law and do not concern any federal law or federal constitutional provision.

## FACTS

31. The plaintiff realleges and incorporates by reference Paragraphs 1 through 30.

32. Yeager Airport sits on a man-made plateau that was constructed in the 1940s by removing portions of the ridge and hilltops. In the original grading process, more than 9 million cubic yards of earth and rock were moved with the aid of more than 2 million pounds of explosives.

33. In and around 2003, the Authority decided to provide a Runway Safety Area (RSA) for its runways, including Runway 5-23. Runway 5-23 is the runway that is the subject of this action.

34. It was determined that the best manner in which to provide the RSA for Runway 5-23 was a 500 foot extension of the runway's southernmost end and the use of an engineered material arresting system (EMAS). An EMAS system is a system of specialized air-entrained cement blocks at the end of a runway onto which an airplane can travel in an emergency. These blocks are meant to collapse under the weight of the airplane thereby stopping or arresting the airplane's progress and preventing a crash.

35. Because of Yeager Airport's location on top of a ridge, extending the runway was not possible without dramatically altering the natural grade of the land.

36. The Runway 5-23 Extension project involved disturbing at least 42.5 acres of vegetated and forested land, including at least 13.75 acres of clear-cutting. Fill and other materials would have to be brought in to construct a mechanically stabilized earth structure (MSE) or manmade slope so the extension could be built at the same elevation as the existing runway. The plan called for the movement of approximately 750,000 cubic yards of earth. At

the time, this would be the largest MSE ever designed and constructed. The total cost for the extensions to both runways was in excess of thirty million dollars.

37. Through a bidding procedure, and based upon certain representations and the amount of Defendant Triad's bid, the Authority contracted with Defendant Triad for the design and engineering work for the runway extension project including, but not limited to, the design and engineering of the MSE. The Authority contracted with Defendant Cast to serve as the contractor for the construction work including, but not limited to, the construction of the MSE. Other named defendants herein provided services and products in conjunction with those contracts.

38. Work started on the Runway 5-23 RSA and the MSE on May 31, 2005. The RSA and the MSE was completed in June of 2007 with the installation of the EMAS blocks.

39. Pursuant to FAA regulations, the EMAS blocks and the runway extension were continually inspected and monitored by the Authority after completion.

40. On July 28, 2013, employees of the Authority were preparing to paint the EMAS blocks with the required coating and noticed separation in and around the EMAS blocks which was not present the week before.

41. The Authority immediately contacted defendants Triad and Cast and informed defendants of this development.

42. Defendants Triad and Cast inspected the EMAS and MSE area and defendants Triad and Cast informed the Authority they did not think there was a problem with the EMAS system nor the MSE on which it was placed. Defendant Triad instructed the Authority to monitor the area through surveys. In fact, defendant Triad informed the Authority that settlement of as much as 24" was within normal range. As instructed, the Authority had surveys

conducted of the area and provided those to defendants Triad and Cast. Surveys were conducted eventually by defendant Triad itself along with drilling and installation of monitoring equipment into the MSE.

43. The EMAS and MSE area continued to settle uniformly until early 2015. During February and early March of 2015, the settlement of the EMAS and MSE area worsened and the Authority began to inform persons and organizations with property directly under the EMAS and MSE structure that they should vacate the area for safety.

44. The Authority was so concerned about the condition of the EMAS and MSE area, that a Board meeting was held at 3pm on March 11, 2015, wherein a representative of defendant Triad was asked by a Board member what the chances were of a catastrophic failure of the EMAS and MSE area. The representative of defendant Triad answered, "very slight."

45. On March 12, 2015, at 12:15 pm, less than 24 hours after being told the chances of a catastrophic failure were slight, the Runway 5-23 EMAS and MSE area catastrophically failed sending hundreds of thousands of cubic yards of fill and other material cascading down and onto the Keystone Drive area of Charleston destroying homes, a church, public roads and damming a stream. All utilities in the area, including natural gas, electricity, water, sewer, telephone and fiber-optic services were destroyed. The damages suffered by the residents of Keystone Drive and the Authority total in the millions of dollars.

46. Defendants knew or should have known of prior failures of MSE systems and failed to warn or otherwise advise plaintiff of known failures of MSE systems on other sites.

47. The plaintiff reasonably relied upon the claimed expertise of the defendants with respect to the subject project.



48. In addition to the loss of millions of dollars invested in the original EMAS and MSE structures' design and construction, the Authority has or will lose millions of dollars in remediation of the damages and the response to the damages caused by the wrongful conduct of the defendants, including the millions of dollars necessary to rebuild the RSA lost when the EMAS and MSE structures catastrophically failed. Losses were incurred by the Authority and others including persons and property owners near the Authority, public utilities, and businesses. Such losses include, but are not limited to, expenses and costs for providing police, fire and emergency relief. The harm sustained as a result of defendants' conduct further includes, but is not limited to, all costs associated with the investigation of the slope failure, property damage and loss, aggravation, annoyance, remediation costs, repair costs, construction costs, engineering costs, replacement costs, and other damages including attorney's fees and costs.

#### **COUNT I: NEGLIGENCE**

**Defendants Triad Engineering, Inc.; Cast & Baker Corporation; Michael Baker Corporation; West Virginia Paving, Inc.; Senex Explosives, Inc.; Affordable Asphalt Maintenance Corporation; and Novel Geo-Environmental, LLC**

49. The plaintiff realleges and incorporates by reference Paragraphs 1 through 48.

50. These defendants had responsibility for the design, building, inspection, analysis, testing, engineering and installation of the subject runway safety area, EMAS and MSE described herein.

51. Defendants owed duties to the plaintiff to act in a reasonably prudent manner and breached the duties owed to the plaintiff.

52. Defendants' breach(es) of the duties owed to the plaintiff include, but are not limited to, the following acts and/or omissions:

- a. Improperly designed and engineered the runway safety area, MSE, EMAS and other related improvements;

- b. Improperly designed and engineered the fill material/compaction requirements for the runway safety area, MSE and other related improvements;
- c. Improperly tested and investigated subsurface and other conditions of the runway safety area, MSE and other related improvements;
- d. Failed to take steps to prevent collapse, subsidence and soil consolidation of the runway safety area, MSE and other related improvements;
- e. Failed to properly inspect the construction of the runway safety area, MSE, EMAS and other related improvements;
- f. Failed to properly test or otherwise verify that the fill comprising the runway safety area and MSE met necessary requirements prior to certification;
- g. Failed to properly monitor, warn or instruct as to the safety of the subject work even after concerns were raised with regard to the subject job;
- h. Improperly and negligently constructed and built the EMAS and MSE system;
- i. Improperly and negligently supervised the construction and installation of the EMAS and MSE systems;
- j. Improperly and negligently failed to design, contract, inspect or ensure the proper placement and operation of the drainage system on the subject project;
- k. Improperly and negligently failed to design, construct, inspect or ensure the proper placement and operation of the Miramesh GR and Miragrid 10XT & 20XT on the subject project;
- l. Improperly and negligently failed to warn or otherwise instruct of the risk, dangers and hazards associated with the 1:1 slope on the subject project; and

m. other such duties which will be determined during the course of discovery in this action.

53. The defendants further breached the standard of care, including but not limited to industry standards, in their design, construction, inspection, analysis, testing, engineering, supervision of and installation of the RSA, EMAS and MSE systems.

54. The event in question is of a kind which ordinarily does not occur in the absence of negligence. Other responsible causes, including the conduct of the plaintiff and third persons, do not exist. The indicated negligence is within the scope of the defendants' duties to the plaintiff. As such, negligence may be presumed from the facts in this action.

55. As a direct and proximate result of the aforesaid conduct of the defendants as described hereinabove, the plaintiffs suffered harms and losses as described herein.

#### **COUNT II: BREACH OF IMPLIED WARRANTY**

**Defendants Triad Engineering, Inc.; Cast & Baker Corporation; Michael Baker Corporation; West Virginia Paving, Inc.; Senex Explosives, Inc.; Affordable Asphalt Maintenance Corporation; and Novel Geo-Environmental, LLC**

56. The plaintiff realleges and incorporates by reference Paragraphs 1 through 55.

57. These defendants, by and through their affirmations, representations and conduct, impliedly warranted that the work and services provided were undertaken with ordinary skill, care and diligence commensurate with that rendered by members of its profession.

58. The work and services provided by defendants was not performed with ordinary skill, care or diligence and was not performed in a skillful, careful, and workmanlike manner.

59. As a direct result of the defendants' breach of implied warranty, the plaintiff suffered harms and losses as described herein.

#### **COUNT III: BREACH OF CONTRACT**

**Defendants Triad Engineering, Inc.; Cast & Baker Corporation; Michael Baker Corporation; West Virginia Paving, Inc.; Senex Explosives, Inc.; Affordable Asphalt Maintenance Corporation; and Novel Geo-Environmental, LLC**

60. The plaintiff realleges and incorporates by reference Paragraphs 1 through 59.

61. A contract existed between plaintiff and defendants to perform work related to the subject project at the Yeager Airport in Charleston, Kanawha County, West Virginia, or plaintiff was an intended third-party beneficiary of contracts between and among defendants related to the RSA project, including the EMAS and MSE system.

62. All conditions precedent have been performed by the plaintiff or occurred for performance under the contract.

63. The defendants, by and through their conduct and/or the conduct of their agents as described herein, have breached material terms of these contracts by failing to perform work or other services in a skillful, careful, and workmanlike manner.

64. As a result of defendants' breach of contract, the plaintiff suffered harms and losses as described herein.

#### **COUNT IV: BREACH OF QUASI-CONTRACT**

**Defendants Triad Engineering, Inc.; Cast & Baker Corporation; Michael Baker Corporation; West Virginia Paving, Inc.; Senex Explosives, Inc.; Affordable Asphalt Maintenance Corporation; and Novel Geo-Environmental, LLC**

65. The plaintiff realleges and incorporates by reference Paragraphs 1 through 64.

66. The plaintiff relied upon the promises of defendants, including the affirmations, representations and conduct of the defendants, to perform work or other services with ordinary skill, care and diligence in a skillful, careful, and workmanlike manner.

67. Defendants reasonably expected the plaintiff to rely upon their promises and the plaintiff did, in fact, rely upon the promises of the defendants.

68. As a result of the plaintiff's reasonable reliance upon the promises of the defendants, the plaintiff suffered harms and losses as described herein. Justice requires that the plaintiff be compensated for the harms and losses, as contained herein.

**COUNT V: STRICT PRODUCT LIABILITY**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

69. The plaintiff realleges and incorporates by reference Paragraphs 1 through 68.

70. Defendant Royal Ten Cate (USA), Inc., was the manufacturer and/or distributor of the Miramesh GR and Miragrid 10XT & 20XT geosynthetic reinforcement materials utilized on the project described herein.

71. Defendants Engineering Arresting Systems Corporation and JMD Company, Inc., were the manufacturers and/or distributors the EMAS land-based aerospace arresting system and its related components.

72. The above-identified products and the components designed, manufactured and/or distributed by defendants were defective by design, manufacture and use when the products left the possession of said defendants, in that they were not reasonably safe for their intended uses, and subjected the plaintiff to harms and losses.

73. Defendants failed to warn or otherwise instruct plaintiff of the dangers associated with their product and the potential consequences.

74. As a direct and proximate result thereof of said defects, the plaintiff sustained harms and losses as described herein.

**COUNT VI: EXPRESS WARRANTY**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**



75. The plaintiff realleges and incorporates by reference Paragraphs 1 through 74.

76. That at all times mentioned herein and prior thereto, defendants Royal Ten Cate (USA), Inc., Engineering Arresting Systems Corporation and JMD Company, Inc., expressly warranted that their products and their related components were reasonably safe.

77. That at all times mentioned herein and prior thereto, reliance was placed upon the skill and judgment of defendants and upon the defendants' express warranty as above described.

78. That at all times mentioned herein, the express warranty was not true and the product were, in fact, not safe or reasonably suited and fit for their intended use, and as a direct result of said breach of express warranty, the plaintiff sustained harms and losses as described herein.

**COUNT VII: IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

79. The plaintiff realleges and incorporates by reference Paragraphs 1 through 78.

80. That at all times mentioned herein, the defendants Royal Ten Cate (USA), Inc., Engineering Arresting Systems Corporation and JMD Company, Inc., impliedly warranted that their products and their related components were safe and fit for the particular purposes for which the product was to be used, that is, the product was safe and suitable for its particular use at the subject airport.

81. Defendants, at the time of contracting for the sale of the subject products and thereafter, had reason to know the particular purpose for which the product was required.

82. That at all times mentioned herein, reliance was placed upon the defendants' skill and judgment and the implied warranty of fitness as described herein.

83. Defendants failed to warn or otherwise instruct plaintiff of the dangers associated with their products and the potential consequences.

84. That the above-described products and their related components were, in fact, not fit for use for their intended purpose, and as a proximate result of the breach of said warranty of fitness of use, the plaintiff has sustained harms and losses as described herein.

**COUNT VIII: IMPLIED WARRANTY OF MERCHANTABILITY**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

85. The plaintiff realleges and incorporates by reference Paragraphs 1 through 84.

86. That at all times mentioned herein, the defendants Royal Ten Cate (USA), Inc., Engineering Arresting Systems Corporation and JMD Company, Inc., impliedly warranted that their products and their related components described herein was of merchantable quality, fit, safe and in proper condition for the ordinary use for which those types of products and their related components were designed and used.

87. Further, at all times mentioned herein, reliance was placed upon the said implied warranties of merchantability by the plaintiff.

88. Defendants failed to warn or otherwise instruct plaintiff of the dangers associated with their products and the potential consequences.

89. That the defendants' products and their related components were not of merchantable quality and were unfit and unsafe for their purpose and as a proximate result of the breach of said warranty of merchantability, plaintiff suffered harms and losses as described herein.

**COUNT IX: NEGLIGENCE**  
**Defendants Royal Ten Cate (USA), Inc., Engineered Arresting Systems Corporation**  
**and JMD Company, Inc.**

90. The plaintiff realleges and incorporates by reference Paragraphs 1 through 89.

91. Defendants Royal Ten Cate (USA), Inc., Engineering Arresting Systems Corporation and JMD Company, Inc., owed a duty to plaintiff to protect it from foreseeable harms and losses.

92. That at all times mentioned herein, the defendants were negligent in controlling, designing, installing, manufacturing, maintaining, repairing, inspecting, distributing, selling, reconfiguring, and failing to warn of the dangers and/or inadequacies for their respective products and their related components.

93. That as a direct and proximate result of the negligence of the said defendants, plaintiff sustained harms and losses as described herein.

#### **COUNT X : DECLARATORY JUDGMENT**

**Defendants Architects and Engineers Insurance Company, Ohio Farmers Insurance Company, Westfield Insurance Company, Liberty Mutual Insurance Company, Lancer Insurance Company, Great American Insurance Company, Erie Insurance Group – Erie Property & Casualty Insurance Company, XL Insurance America, Inc., HDI-Gerling America Insurance Company, Cincinnati Insurance, and The Travelers Indemnity Company**

94. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 93 of this Complaint as if set forth herein verbatim.

95. Upon information and belief, for the claims asserted by the plaintiff herein, the following defendants are insured by the following defendant insurance companies:

- Defendant Triad Engineering, Inc., is insured by defendant Architects and Engineers Insurance Company, A Risk Retention Group under Policy No. AEICPG-13;

- Defendant Triad Engineering, Inc., is also insured by defendant Cincinnati Insurance Company under a commercial general liability policy;
- Defendant Triad Engineering, Inc., is additionally insured by defendant Westfield Insurance Company under a commercial general liability policy;
- Defendant Cast & Baker Corporation is insured by defendants Ohio Farmers Insurance Company and Westfield Insurance Company under Bond No.: 0833304;
- Defendant Cast & Baker Corporation is also insured by defendant Westfield Insurance Company under a general commercial liability policy;
- Defendant Cast & Baker Corporation is additionally insured by defendant Travelers Indemnity Company under a general commercial liability policy listing defendant Triad Engineering, Inc., and the plaintiff as an additional insured;
- Defendant Cast & Baker Corporation is additionally insured by defendant Travelers Indemnity Company under a commercial excess liability (umbrella) insurance policy;
- Defendant West Virginia Paving, Inc. is insured by defendant Liberty Mutual under Policy No. RG2-C85-004095-114;
- Defendant Senex Explosives, Inc., is insured by defendant Lancer Insurance Company under Policy Nos. GL8028883, XS8028893, and XS8028903. Defendant Senex Explosive, Inc. is also insured by defendant Great American Insurance Company under Policy No. CPP669684001;

- Defendant Affordable Asphalt Maintenance Corporation is insured by defendants Erie Insurance Group -- Erie Insurance Property & Casualty Company and Westfield;
- Defendant Engineered Arresting Systems Corporation, d/b/a Zodiac Arresting Systems America is insured by defendant XL Insurance America, Inc; and
- Defendant Royal Ten Cate (USA), Inc. is insured by defendant HDI-Gerling America Insurance Company.

96. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, Plaintiff seeks declaratory judgment against the defendant insurance companies identified herein this Court to the effect that any and all applicable policies issued by the defendant insurance companies to the named defendants in this action provide coverage for any and all claims asserted by the plaintiffs in this litigation and that no exclusions, including but not limited to, landslide exclusions, apply to any of plaintiff's claims asserted in this action.

**COUNT XI : DECLARATORY JUDGMENT**  
**Defendants John Doe Insurance Company Nos. 1, 2 and 3**

97. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 96 of this Complaint as if set forth herein verbatim.

98. Upon information and belief, at the time of the filing of this Complaint, the insurance carriers for defendants Michael Baker Corporation and Novel Geo are unknown, and will be treated as defendant John Doe Insurance Company No. 1 and defendant John Doe Insurance Company No. 2.



99. Upon information and belief, defendant Triad has an additional applicable insurance carrier who is unknown at the time of the filing of this Complaint and will be treated as defendant John Doe Insurance Company No. 3.

100. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, Plaintiffs seek declaratory judgment against defendants John Doe Insurance Company Nos 1 through 3, to the effect that any and all applicable policies issued by defendant John Doe insurance company Nos 1 through 3 to defendants Michael Baker Corporation, Novel Geo and/or Triad in this action provide coverage for any and all claims asserted by the plaintiffs in this litigation and that no exclusions, including but not limited to, landslide exclusions, apply to any of plaintiff's claims asserted in this action.

**COUNT XII: DECLARATORY JUDGMENT**  
**Defendants John Doe Insurance Company Nos. 4 - 20**

101. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 100 of this Complaint as if set forth herein verbatim.

102. At the time of the filing of this Complaint, to the extent that any insurance company for the named defendants or any defendant named later are unknown at the time of the filing of this Complaint, these unknown defendant insurance companies will be treated as John Doe Insurance Company Nos. 4 through 20.

103. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, Plaintiffs seek declaratory judgment against defendant John Doe Insurance Company Nos. 4 through 20, to the effect that any and all applicable policies issued by defendant John Doe Insurance Company Nos. 4 through 20 to any current or future defendant in this action provide coverage for any and all claims asserted by the plaintiffs in this

litigation and that no exclusions, including but not limited to, landslide exclusions, apply to any of plaintiff's claims asserted in this action.

**COUNT XIII: DECLARATORY JUDGMENT**  
**Defendants New Hampshire Insurance Company,**  
**AIG Aerospace Insurance Services, Inc., and ACE American Insurance Company**

104. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 103 of this Complaint as if set forth herein verbatim.

105. Upon information and belief, plaintiff is insured by defendants New Hampshire Insurance Company and AIG Aerospace, and ACE American Insurance Company. Upon information and belief, defendant New Hampshire Insurance Company is plaintiff's property insurer and defendants AIG Aerospace and Ace American Insurance Company are plaintiff's commercial liability insurer.

106. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, plaintiff seeks declaratory judgment against defendants New Hampshire Insurance Company, AIG Aerospace and ACE American Insurance Company to the effect that any and all applicable policies issued by defendants New Hampshire Insurance Company, AIG Aerospace and ACE American Insurance Company to the plaintiff provide coverage, defense and/or indemnification to the plaintiff for any and all third party claims brought against the plaintiff, including but not limited to any claim brought by surrounding individuals and property owners, and that no exclusions, including but not limited to, landslide exclusions, apply to any third party claim.

**COUNT XIV: DECLARATORY JUDGMENT**  
**Defendants New Hampshire Insurance Company,**  
**AIG Aerospace Insurance Services, Inc., and ACE American Insurance Company**

107. The plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 106 of this Complaint as if set forth herein verbatim.

108. Upon information and belief, plaintiff Central West Virginia Regional Airport Authority, Inc. is insured by defendants New Hampshire Insurance Company, AIG Aerospace and ACE American Insurance Company. Upon information and belief, defendant New Hampshire Insurance Company is plaintiff's property insurer and defendants AIG Aerospace and ACE American Insurance Company are plaintiff's commercial liability insurer.

109. Pursuant to West Virginia Code § 55-13-1 et seq. and Rule 57 of the West Virginia Rules of Civil Procedure, Plaintiff seeks declaratory judgment against defendants New Hampshire Insurance Company, AIG Aerospace and ACE American Insurance Company to the effect that any and all applicable policies issued by defendants New Hampshire Insurance Company, AIG Aerospace, and ACE American Insurance Company to the plaintiff provide coverage to the plaintiff for any and all first party claims brought by the plaintiff for damages to its own property and infrastructure related in any manner to this catastrophic event, and that no exclusions, including but not limited to, landslide exclusions, apply to any first party claim.

**PUNITIVE DAMAGES  
(All Defendants)**

110. Plaintiff hereby incorporates by reference paragraphs 1 through 109 as if fully cited herein.

111. The acts and omissions forming the basis of the aforementioned counts of this Complaint were of such extreme, willful, wanton, and reckless nature, and showed such gross indifference to warrant punitive damages. The acts of the defendants were carried out with a flagrant disregard for the rights of others and with actual awareness that their acts would, in reasonable probability, result in harm.

112. Defendants had actual, subjective awareness of the risk involved in their acts and omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

113. Punitive damages are justified to punish defendants for their knowing deliberate and wanton acts which resulted in the subject harms and losses. Punitive damages will serve to deter defendants from continuing to defy their obligations in their pursuit of profits.

114. Defendants' actions and conduct are and were of such willful, wanton, reckless, and unlawful nature and with such callous disregard, that in order to stop these acts from occurring again, plaintiff is entitled to an award of punitive damages in addition to other damages alleged herein.

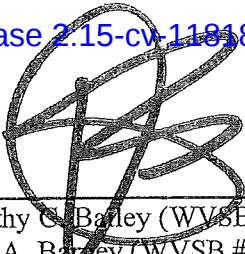
115. That at all times mentioned herein, the acts of the defendants were joint, several and concurrent.

**WHEREFORE**, the plaintiff prays that this Court award compensatory, including but not limited to reimbursement for sums paid to persons and entities as a result of defendants' conduct, and punitive damages against defendants, jointly and severally; declare rights under the existing insurance contracts; award attorney's fees and costs; award pre and post-judgment interest; and grant other such relief as the Court deems equitable and just.

**PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.**

**CENTRAL WEST VIRGINIA  
REGIONAL AIRPORT AUTHORITY, INC.,**

By Counsel,



Timothy C. Bailey (WVSB # 5839)  
Mark A. Bailey (WVSB # 10282)  
BUCCI BAILEY & JAVINS, LC  
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[timbailey@bbjlc.com](mailto:timbailey@bbjlc.com)  
[mbarney@bbjlc.com](mailto:mbarney@bbjlc.com)

and

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[Scott.segal@segal-law.com](mailto:Scott.segal@segal-law.com)

and

Anthony J. Majestro (WVSB # 5165)  
James C. Powell (WVSB # 2957)  
Powell & Majestro PLLC  
405 Capitol Street, Suite P1200  
Charleston, West Virginia 25301  
Telephone (304) 346-2889  
[amajestro@powellmajestro.com](mailto:amajestro@powellmajestro.com)



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022  
Judge Webster

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,

LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
a Pennsylvania corporation,  
AIG AEROSPACE INSURANCE SERVICES, INC.,  
a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURANCE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

### **EMERGENCY MOTION TO PRESERVE REAL EVIDENCE**

NOW COMES the plaintiff Central West Virginia Regional Airport Authority, Inc.,<sup>1</sup> by counsel, and hereby moves this Court for an order approving the preservation of real evidence. Specifically, the plaintiff seeks Court approval of a preservation protocol so as to permit the Authority to go forward with remediation of the subject project, including the rebuilding of certain portions of Runway 5-23 at Yeager Airport. In support of its motion, the plaintiff states as follows:

---

<sup>1</sup> Hereinafter referred to as "the Authority."

1. This action was instituted on May 22, 2015, and concerns the catastrophic failure of the mechanically stabilized earth structure ("MSE"); the engineered material arresting system ("EMAS"); and related components, for the Runway 5-23 extension project at Yeager Airport in Charleston, West Virginia.

2. On March 12, 2015, at 12:15 pm, less than 24 hours after being told the chances of a catastrophic failure were slight, the Runway 5-23 MSE, EMAS and related components at Yeager Airport catastrophically failed sending hundreds of thousands of cubic yards of fill and other material cascading down and onto the Keystone Drive area of Charleston destroying homes, a church, public roads and damming a stream. All utilities in the area, including natural gas, electricity, water, sewer, telephone and fiber-optic services were destroyed. The damages suffered by the residents of Keystone Drive and the Authority total in the millions of dollars.

3. In an effort to remediate the subject site, on June 3, 2015, the Authority board members voted to approve a contract with Schnabal Contracting to remove portions of the failure of the subject hillside. The first phase of this project will cost nearly five million dollars. The plan sheet for the stabilization project is attached hereto as Exhibit A. Both the Department of the Army, Corps of Engineers, and the West Virginia Department of Environmental Protection have confirmed that permits are not required to perform the remediation work. *See* Exhibit B and C.

4. Recognizing its duty to preserve evidence, the plaintiff seeks Court approval, and a finding of reasonableness, of the attached preservation protocol: Exhibit D. This protocol provides all parties to the action the opportunity to obtain evidence reasonably calculated to lead to the discovery of admissible evidence.

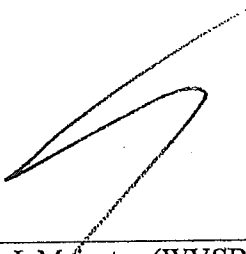
5. The plaintiff has provided notice of the instant motion to all identifiable defendants in this action.

6. Should this Court deny the instant motion, the plaintiff will be irreparably harmed. Failure to remediate the site will result in the potential loss of flights at Yeager Airport resulting in the loss of income to the Authority and the loss of travel options to West Virginia consumers. Failure to remediate the site could possibly result in further property damage and personal injury to those homes and persons situated below the site. Correspondingly, the failure to provide defendants the opportunity to inspect and test the area before or during remediation will result in allegations of spoliation of evidence. There is no other relief or mechanism available to the plaintiff to accomplish the goals of mitigating its damages and preserving evidence.

**WHEREFORE**, the plaintiff prays that this Court approve the attached preservation protocol, Exhibit D, find it reasonable and proper, and award other such relief as deemed equitable and just.

**CENTRAL WEST VIRGINIA  
REGIONAL AIRPORT AUTHORITY, INC.,**

By Counsel,



---

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James C. Powell (WVSB # 2957)  
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405 Capitol Street, Suite P1200  
Charleston, West Virginia 25301  
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[amajestro@powellmajestro.com](mailto:amajestro@powellmajestro.com)

Scott S. Segal (WVSB # 4717)  
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Charleston, West Virginia 25301  
Telephone (304) 344-9100  
[Scott.segal@segal-law.com](mailto:Scott.segal@segal-law.com)

and

Timothy C. Bailey (WVSB # 5839)  
Mark A. Barney (WVSB # 10282)  
BUCCI BAILEY & JAVINS, LC  
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Post Office Box 3712  
Charleston, West Virginia 25337  
Telephone (304) 345-0346  
[timbailey@bbjlc.com](mailto:timbailey@bbjlc.com)  
[mbarney@bbjlc.com](mailto:mbarney@bbjlc.com)



# CENTRAL WEST VIRGINIA REGIONAL AIRPORT AUTHORITY

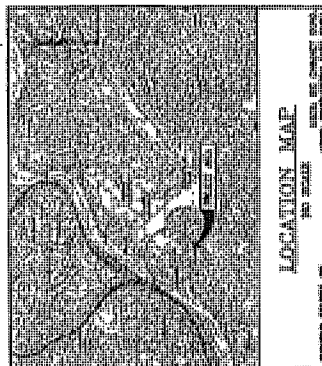
## CHARLESTON, WEST VIRGINIA

### EMERGENCY RUNWAY 5 SAFETY AREA & SLOPE MITIGATION

#### CONTRACT NO. 2015-03

#### DRAWING INDEX

SHEET NO.	DESCRIPTION
1	SITE PLAN (1"=100')
2	EXISTING & PROPOSED CONTROL PLANS, DOWNWIND & STOPPING AREA
3	EXISTING & PROPOSED CONTROL PLANS, WASTE MATERIALS STORAGE AREA
4	EXISTING & PROPOSED CONTROL PLANS, WASTE MATERIALS STORAGE AREA
5	EXISTING & PROPOSED CONTROL PLANS, WASTE MATERIALS STORAGE AREA
6	EXISTING & PROPOSED CONTROL PLANS, WASTE MATERIALS STORAGE AREA
7	EXISTING & PROPOSED CONTROL PLANS, WASTE MATERIALS STORAGE AREA
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20	EXISTING & PROPOSED CONTROL PLANS, WASTE MATERIALS STORAGE AREA
21	EXISTING & PROPOSED CONTROL PLANS, WASTE MATERIALS STORAGE AREA
22	EXISTING & PROPOSED CONTROL PLANS, WASTE MATERIALS STORAGE AREA



1380 Wilmington Pike, Suite 100  
West Chester, PA 19382  
Phone: 610-696-6066  
Fax: 610-696-7771  
schnabel-eng.com

CONTACT PERSON:  
ALLEN CADDEN, P.E., D.GE  
610-696-8086  
acadden@schnabel-eng.com

BID COPY

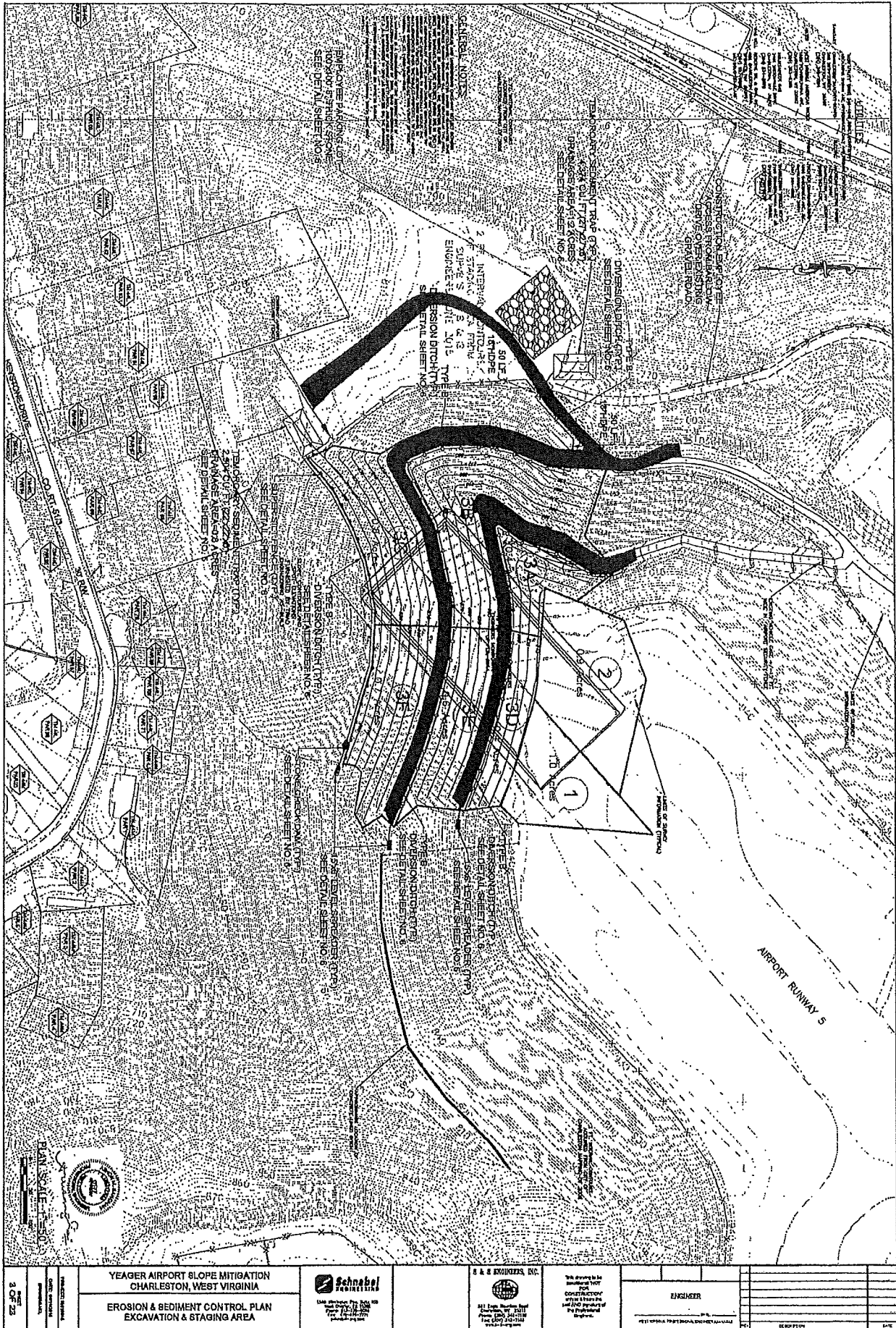
EXHIBIT A









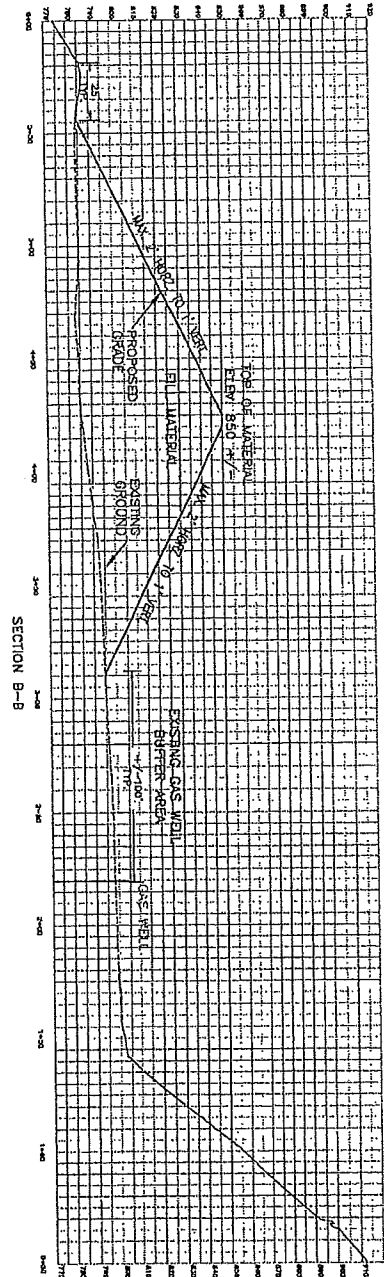
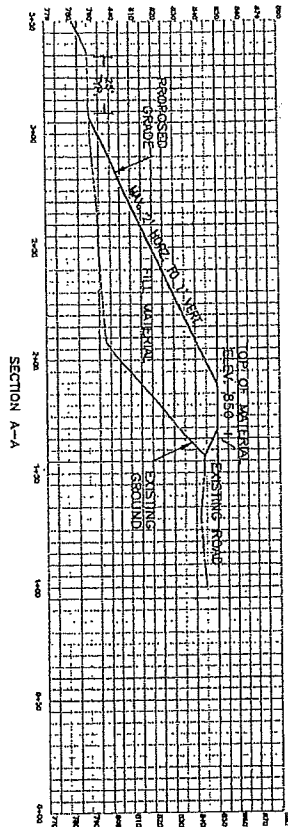




3 OF 23	PROJECT NUMBER C4015, Revision 0 Prepared by: Schnabel	YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA	 1000 Main Street, Suite 100 Charleston, WV 25301 Phone: 304.763.1111 Fax: 304.763.1112 www.schnabel.com	 S & S ENGINEERS, INC. 1000 Main Street, Suite 100 Charleston, WV 25301 Phone: 304.763.1111 Fax: 304.763.1112 www.s-s-engineers.com	This drawing has been prepared by the ENGINEER and is not to be used for any other purpose without the written consent of the ENGINEER.	ENGINEER W. E. S. ENGINEERS, INC.	1. DESIGN 8/5/15	DATE
		EROSION & SEDIMENT CONTROL PLAN EXCAVATION & STAGING AREA						DESCRIPTION







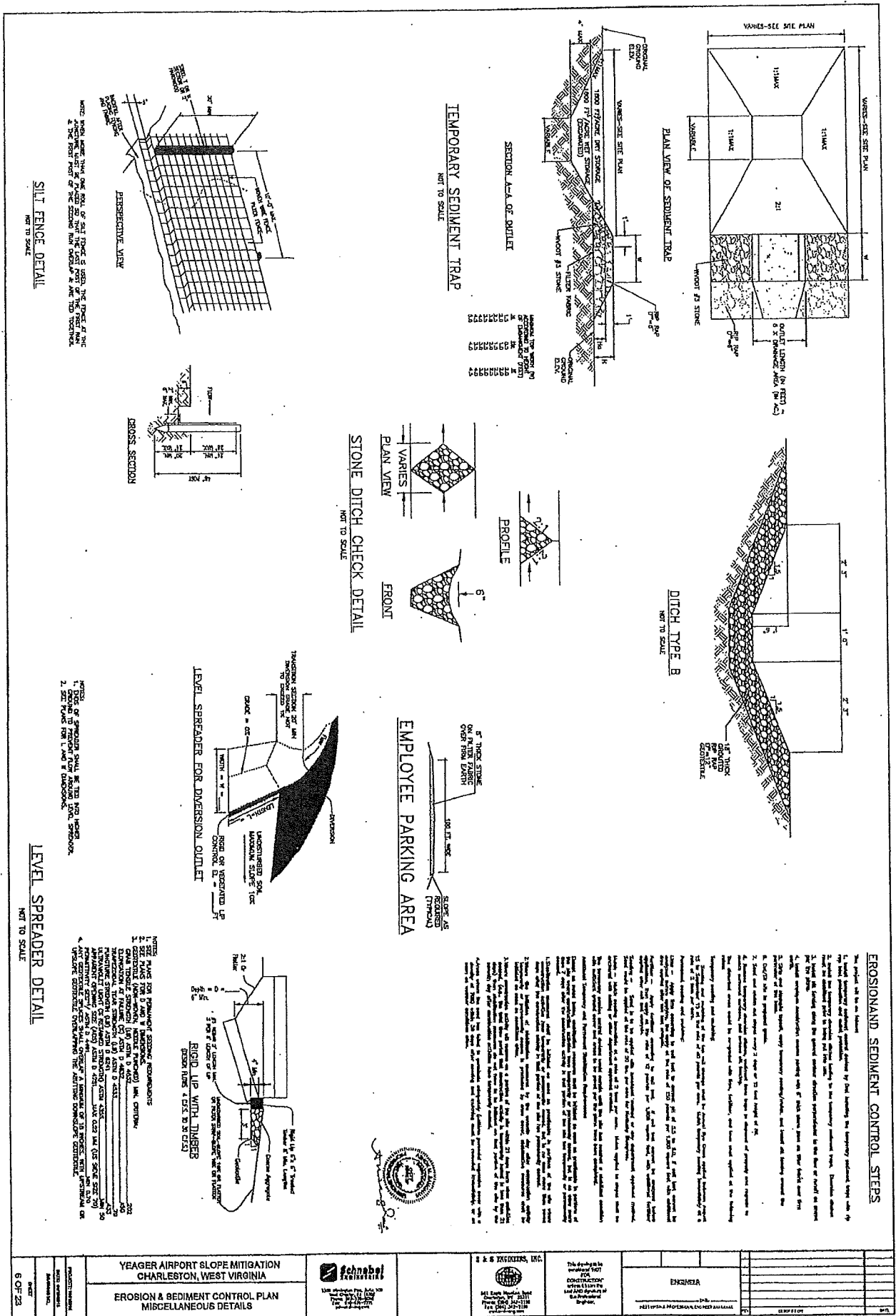


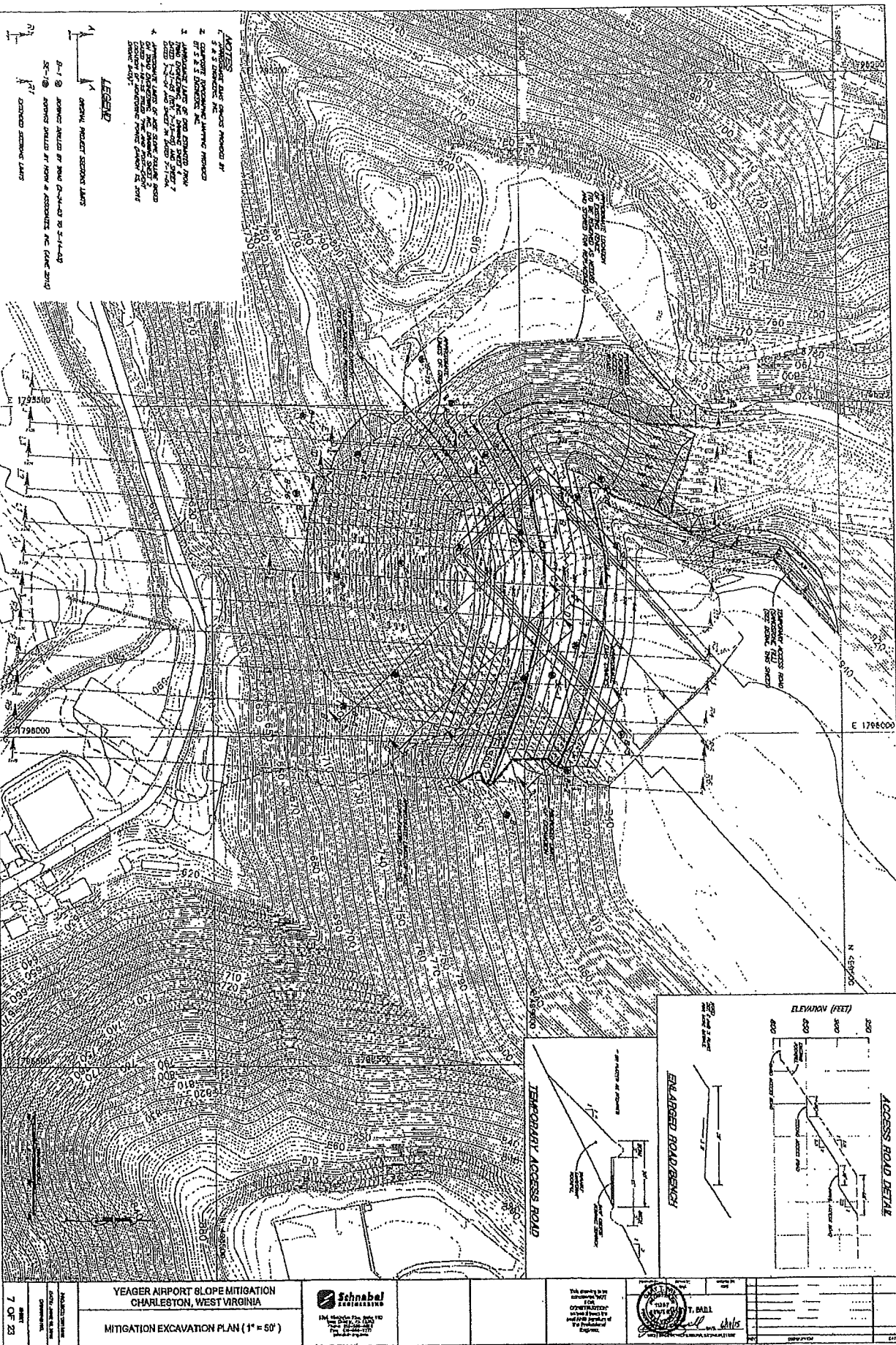
PLAN SCALE 1"=20'



5 OF 23	Total Inhabitant Population 23,000 Major Employers	YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA	 100 West Virginia Plaza Charleston, WV 25301 Tel: 304.771.1111 Fax: 304.771.1112 www.echnabel.com	 S & S ENGINEERS, INC. 101 East Raleigh Street Charleston, WV 25301 Tel: 304.771.1111 Fax: 304.771.1112 www.s-s-engineers.com	The Engineer is to verify that NOT CONSTRUCTION will be in line with the final design of the proposed design.	ENGINEER  WEST VIRGINIA PROFESSIONAL ENGINEER			
							NO.	DESCRIPTION	DATE
		EROSION & SEDIMENT CONTROL PLAN WASTE MATERIALS DISPOSAL SECTIONS							



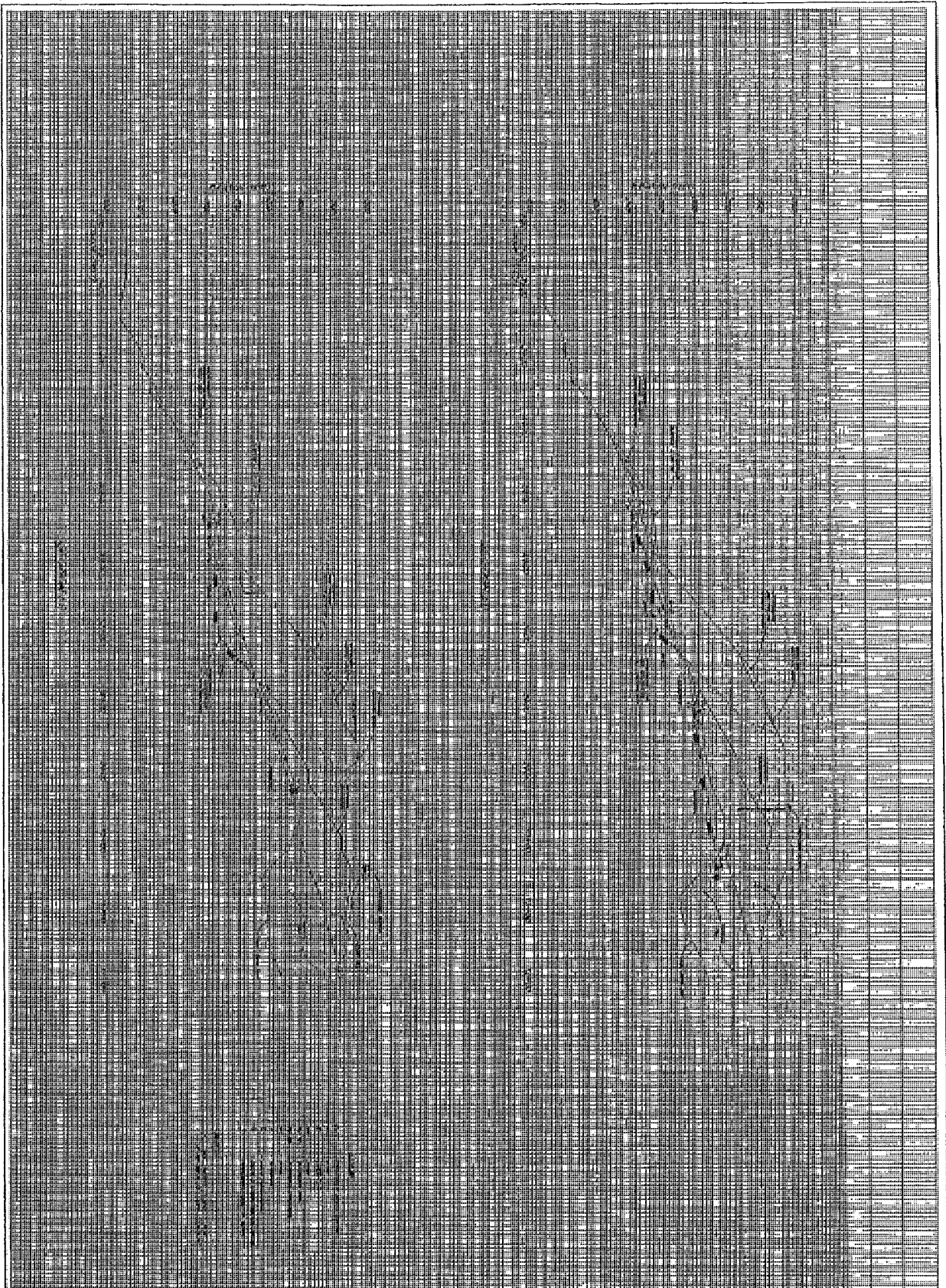






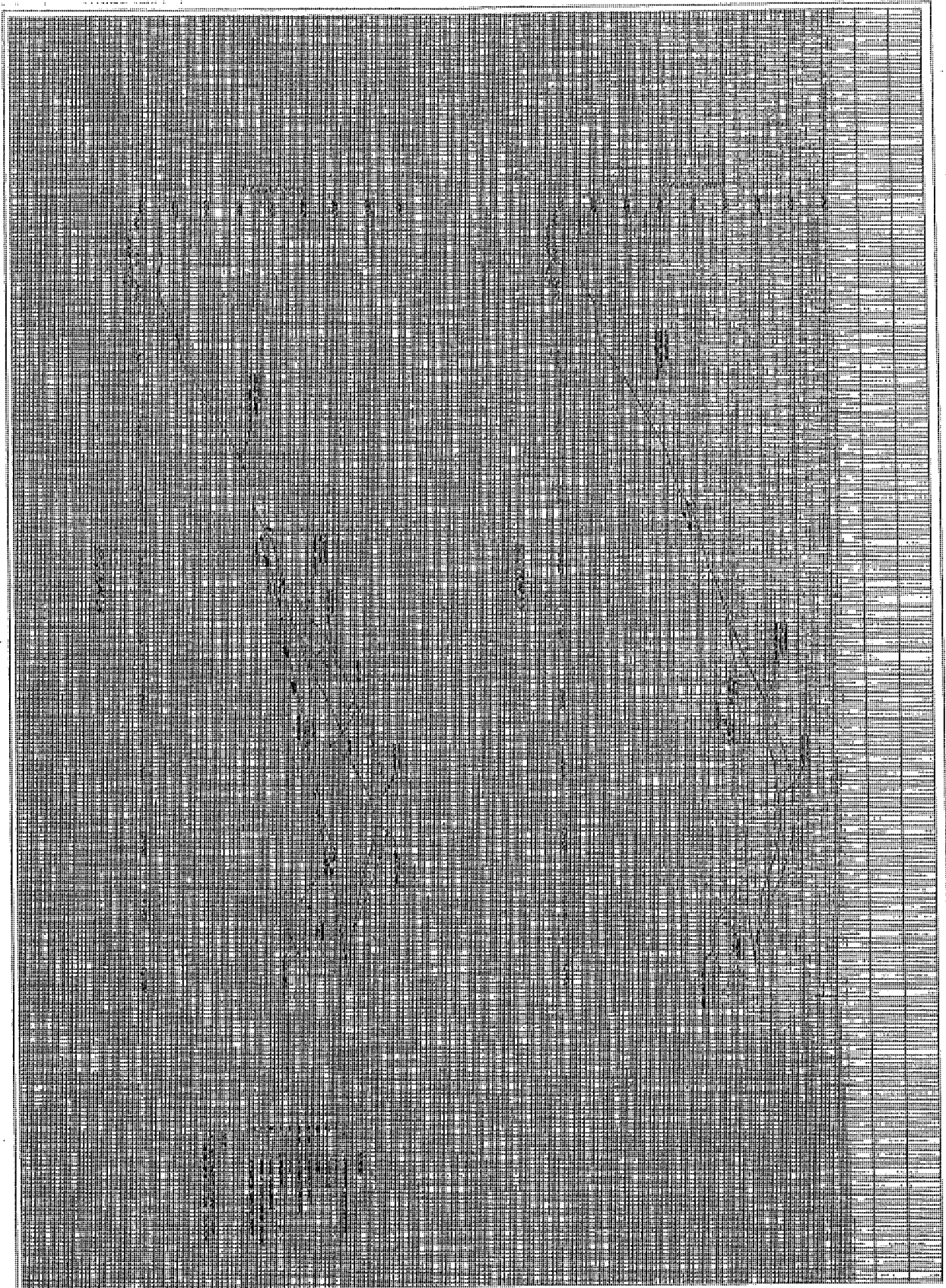
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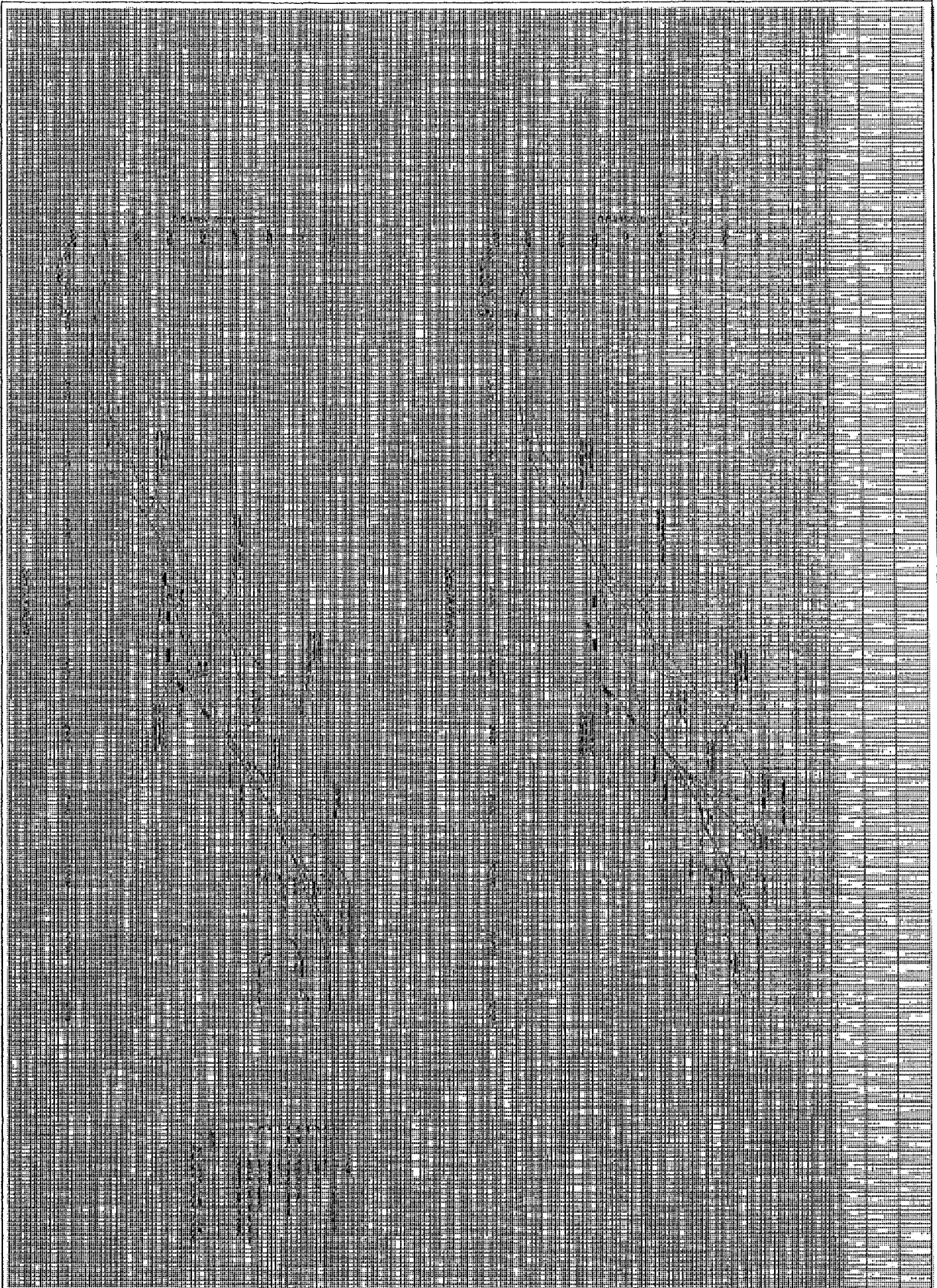
9 OF 23 10/15/2014 10/15/2014 10/15/2014	YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA	 Schnabel ENGINEERING 1000 West Virginia Ave., Suite 100 Charleston, WV 25301 Phone: (304) 725-1111 Fax: (304) 725-1112 Email: info@schnabel-engineering.com	The Study is to be conducted by the CONTRACTOR and shall be the responsibility of the CONTRACTOR.		10/15/2014 10/15/2014 10/15/2014
	MITIGATION SECTIONS L2, L3				





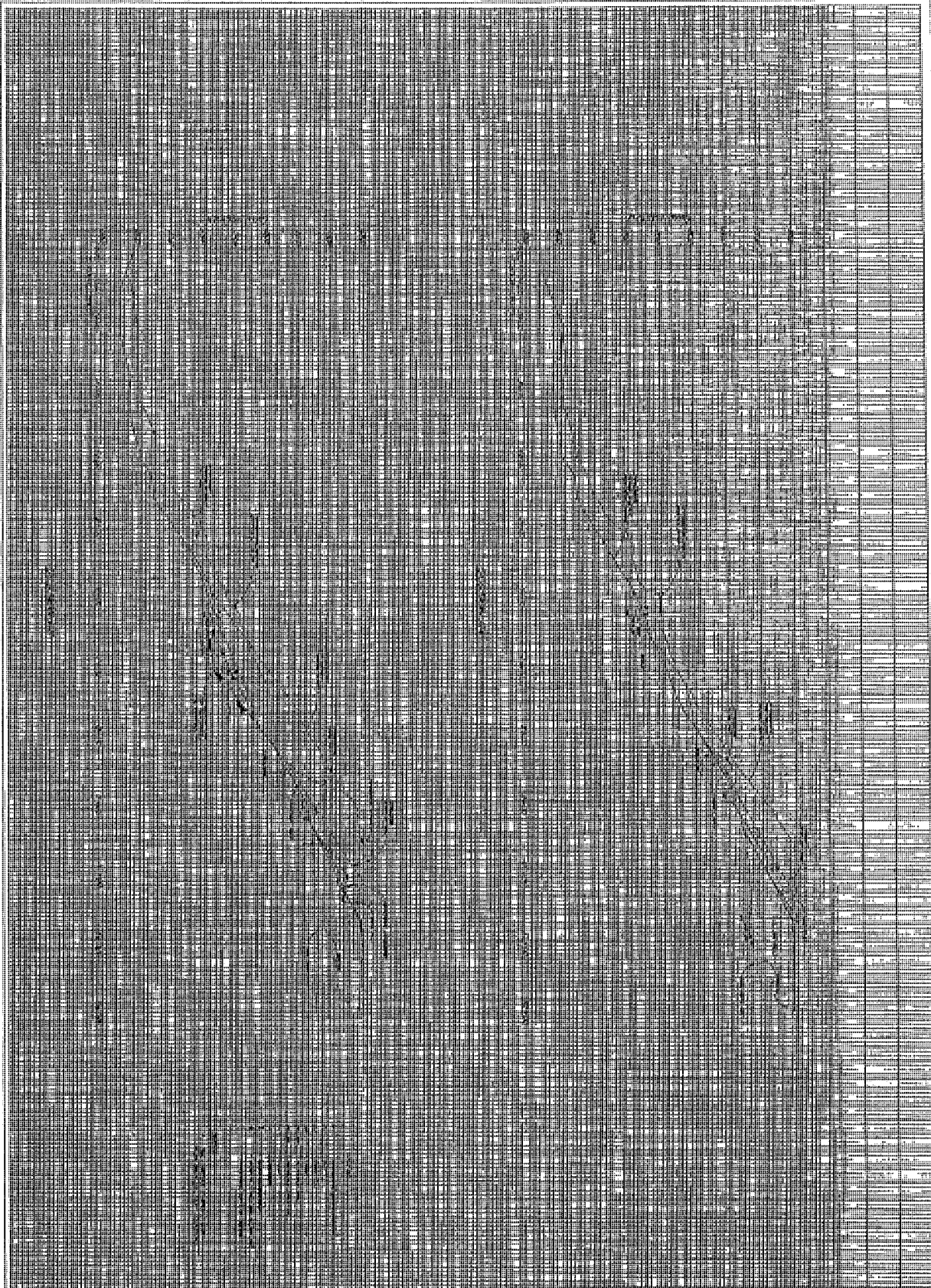
T E C H N I C A L D R A W I N G	S C A L E	N O T E	YENNER AIRPORT GLOBE MITIGATION		S E A L	S T A M P	S I G N A T U R E		
			CHARLESTON, WEST VIRGINIA						
MITIGATION SECTIONS LA, LB					The following is a true and correct copy of the original as shown to the undersigned by the person or persons who executed the same.				





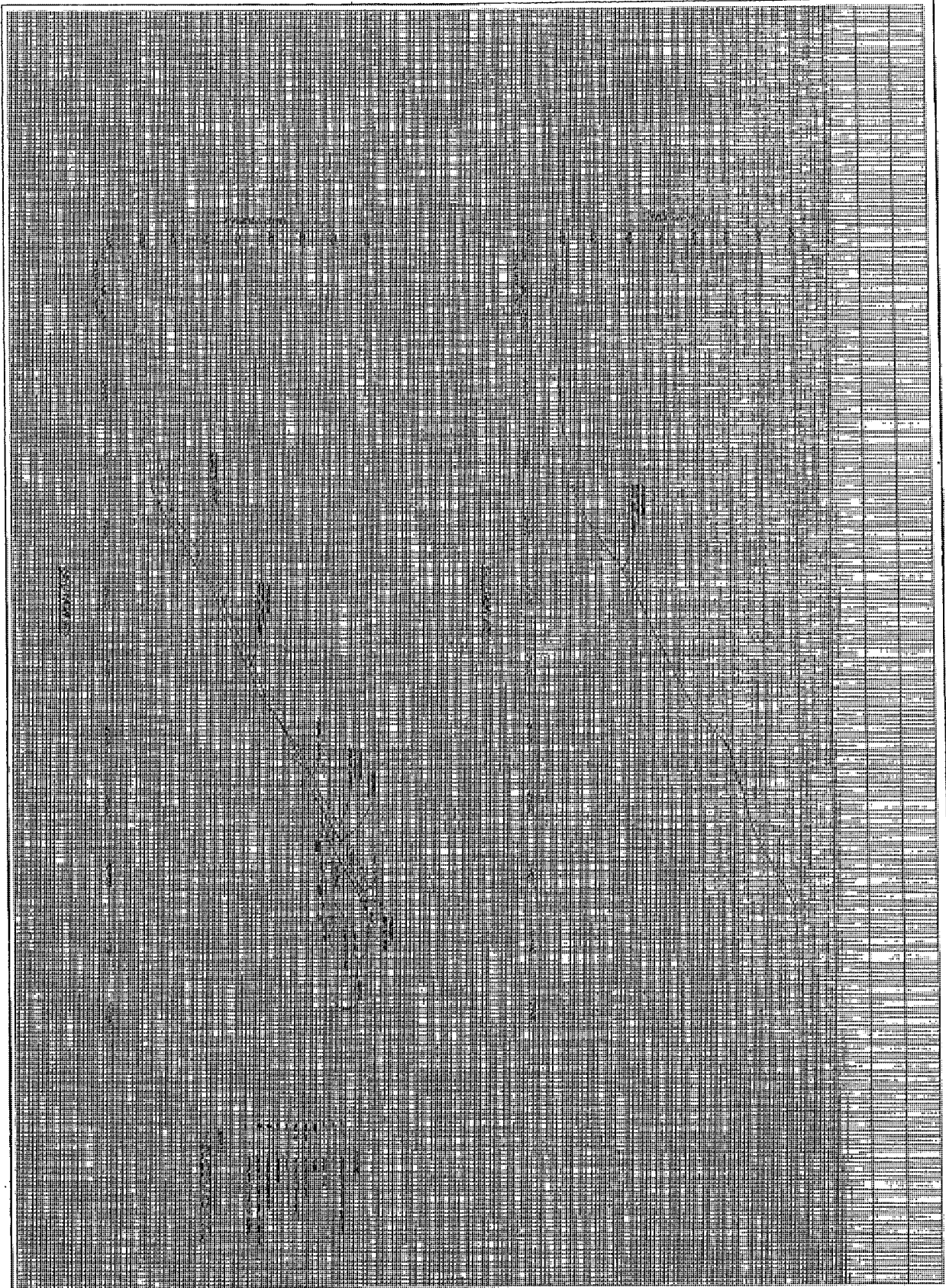
11 OF 23 11 OF 23	YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA	 Schnabel ENGINEERING	This drawing is to be used for CONSTRUCTION and is not to be used for any other purpose without the written consent of the Engineer	APPROVED BY  DATE	PROJECT NO. SHEET NO.
	MITIGATION SECTIONS R1, R2			DRAWN BY CHECKED BY DATE	






YANKEE AIRPORT EROSION MITIGATION CHARLESTON, WEST VIRGINIA				The attached map is a preliminary map and is not to be used for construction purposes without the approval of the project manager.				Date: 8/5/15	
MITIGATION DESIGN NO. 04									






13 OF 23	YEAGER AIRPORT SLOPE MITIGATION CHARLESTON, WEST VIRGINIA	 Schnabel ENGINEERING	This drawing is to be used only for the purpose of the contract and is not to be used for any other purpose without the written consent of the Engineer.	Project No. 15-001	Sheet No. 13 OF 23	Date 08/05/15	Scale AS SHOWN	Author J. T. BAILL	Check J. T. BAILL	Title YEAGER AIRPORT SLOPE MITIGATION	Description MITIGATION SECTIONS R6, R8	Scale AS SHOWN
				Project No. 15-001	Sheet No. 13 OF 23	Date 08/05/15	Scale AS SHOWN	Author J. T. BAILL	Check J. T. BAILL	Title YEAGER AIRPORT SLOPE MITIGATION	Description MITIGATION SECTIONS R6, R8	Scale AS SHOWN



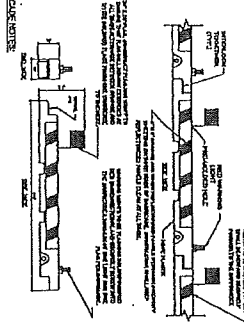
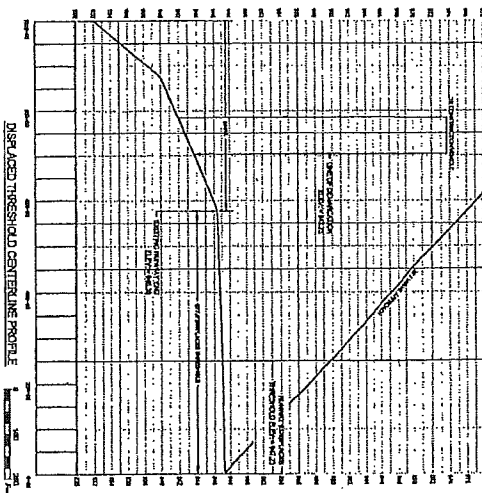
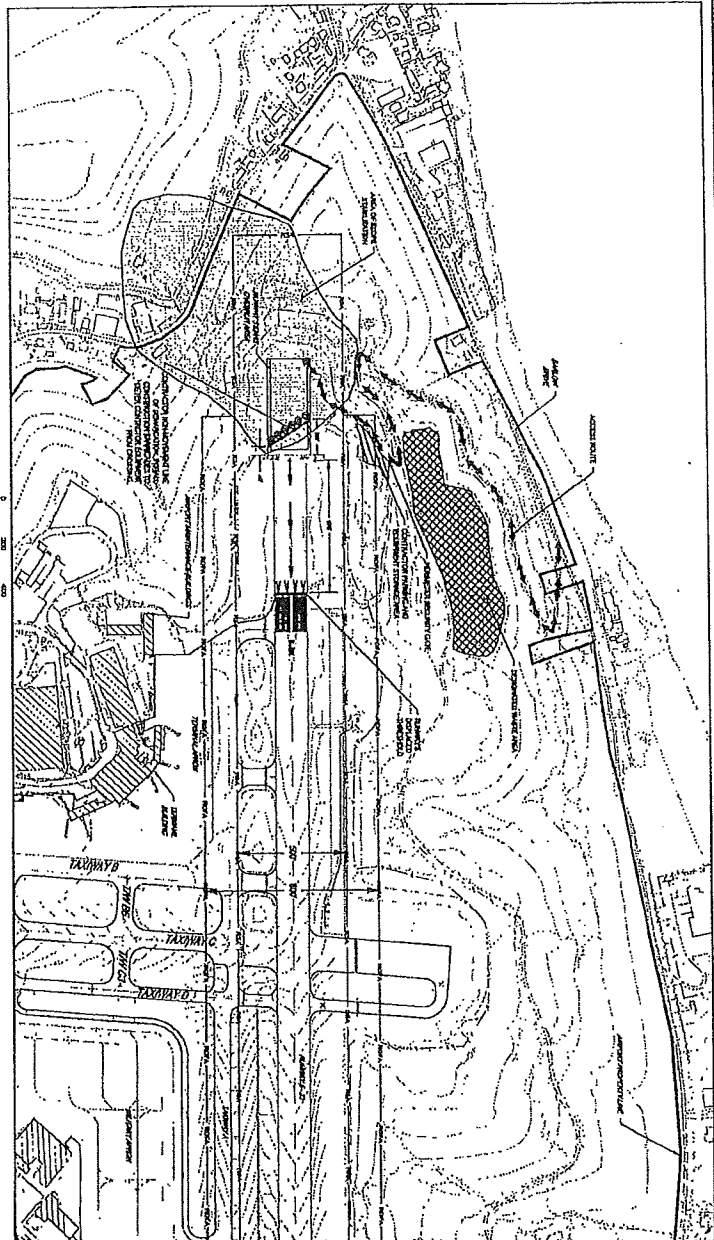
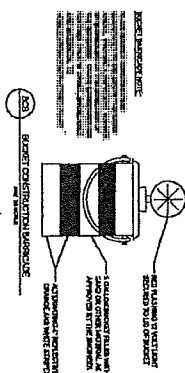




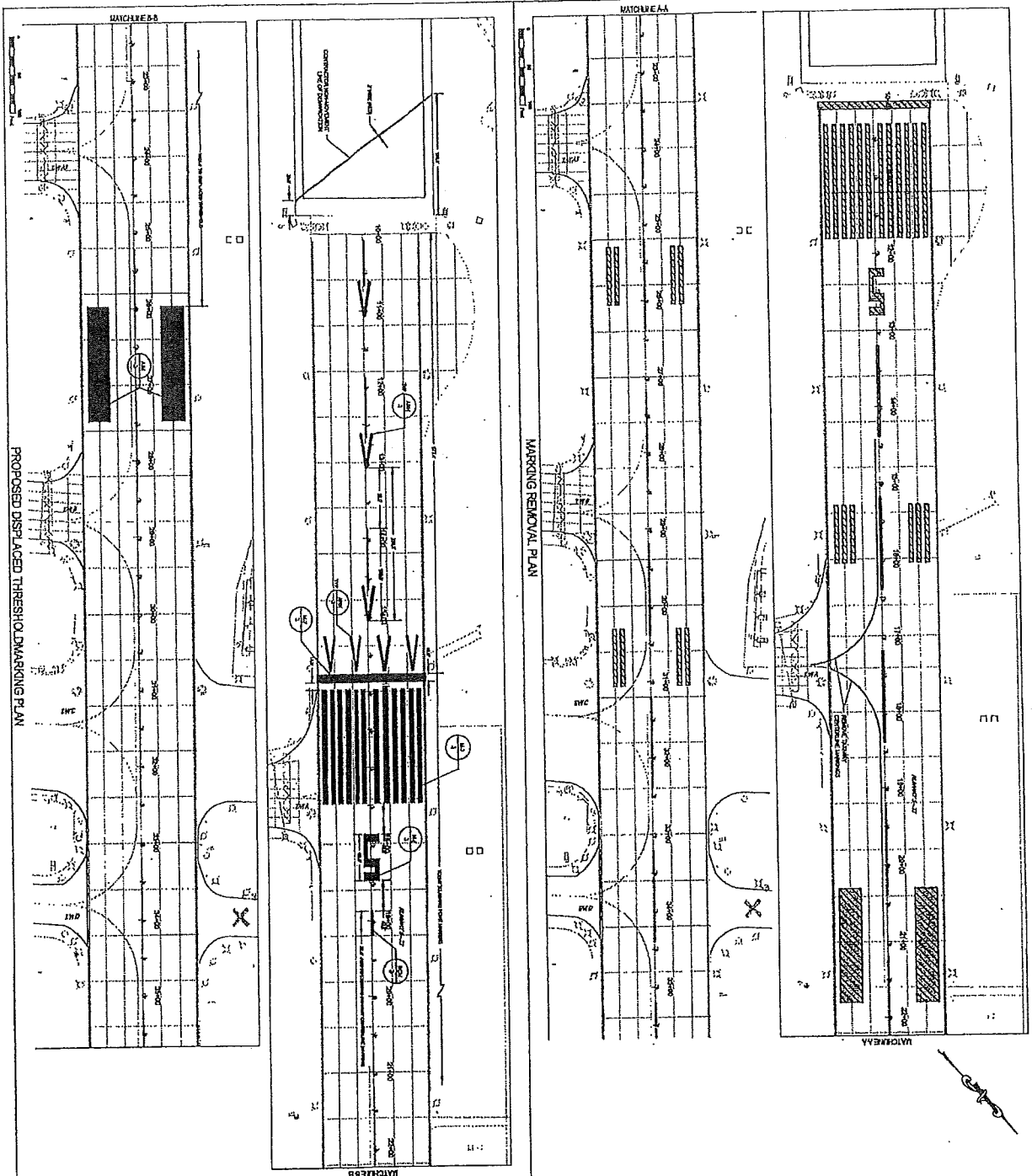


18 OF 23	PROJECT: WEATHER SITE: CHARLESTON DRAWING NO.	YEAGER AIRPORT BLOPE MITIGATION CHARLESTON, WEST VIRGINIA	 1208 W. 10th Street, Suite 100 Charleston, WV 25302 Phone: 304.725.1234 Fax: 304.725.1235 Website: www.schnabel.com			This drawing is to be used only for the project and location shown on the drawing. It is not to be used for any other project or location without the written consent of Schnabel Engineering.	 T. BRULL Professional Engineer State of West Virginia No. 12345	DATE: 10/15/10 DRAWN BY: J. Smith CHECKED BY: M. Jones APPROVED BY: T. Brull	SHEET NO. 18 TOTAL SHEETS: 23
		INSTRUMENTATION LOCATION DETAIL							



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NOTES:  
1. All dimensions are in feet and inches.  
2. All dimensions are to the centerline of the runway.  
3. All dimensions are to the centerline of the taxiway.  
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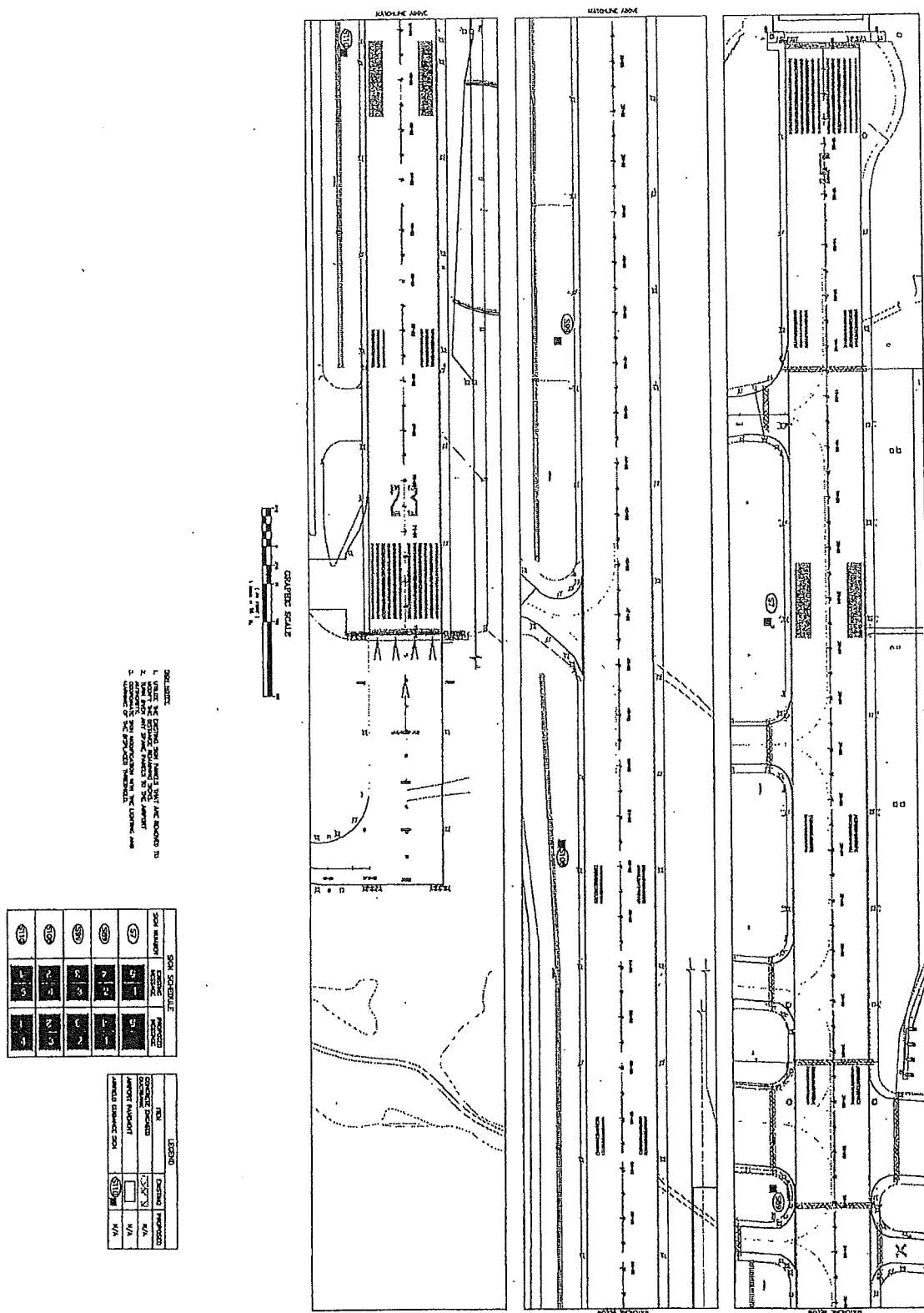
NO.	DESCRIPTION	DATE
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2	REVISION	10/1/14
3	REVISION	10/1/14
4	REVISION	10/1/14
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6	REVISION	10/1/14
7	REVISION	10/1/14
8	REVISION	10/1/14
9	REVISION	10/1/14
10	REVISION	10/1/14

NO.	DESCRIPTION	DATE
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2	REVISION	10/1/14
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6	REVISION	10/1/14
7	REVISION	10/1/14
8	REVISION	10/1/14
9	REVISION	10/1/14
10	REVISION	10/1/14











DEPARTMENT OF THE ARMY  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

JUN 22 2015

REPLY TO  
ATTENTION OF:

Regulatory Division  
North Branch  
LRH-200100088-ELK-Unnamed Tributary Elk River

**APPROVED JURISDICTIONAL DETERMINATION  
NO PERMIT REQUIRED**

Mr. Richard A. Atkinson, Airport Director  
Central West Virginia Regional Airport Authority  
Yeager Airport  
100 Airport Road, Suite 175  
Charleston, West Virginia 25311

Dear Mr. Atkinson:

I refer to a request dated June 18, 2015, submitted on your behalf by Heritage Technical Associates, Inc., requesting an approved jurisdictional determination (JD) for three potentially non-jurisdictional areas located on property adjacent to the Runway 5 Safety Area at the Yeager Airport at Charleston, in Kanawha County, Ohio. You have also requested the United States Army Corps of Engineers (Corps) review your proposal for possible Department of the Army (DA) permit requirements. The request has been assigned the following file number: LRH-200100088-ELK-Unnamed Tributary Elk River. Please reference the appropriate file number on all future correspondence related to this request.

The Corps' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act requires a DA permit be obtained prior to discharging dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 requires a DA permit be obtained for any work in, on, over or under a navigable water.

***Preliminary Jurisdictional Determination***

Based upon a review of the provided information and other information available to us, this office has determined the concrete channel and two erosional channels (1RT Erosional Channel and 2RT Erosional Channel) draining into the concrete channel, as depicted on the drawing titled *Runway 5 Safety Area and Slope Mitigation Areas Reviewed for the Presence of Jurisdictional Waters* and dated June 17, 2015, are not considered jurisdictional waters of the United States and thus are not subject to regulation under Section 404 of the Clean Water Act. This jurisdictional verification is valid for a period of five years from the date of this letter unless new information warrants revision of the delineation prior to the expiration date.

***EXHIBIT B***



-2-

A JD has not been completed for the areas noted as Elk Twomile Creek, UNT 1 of ETM, UNT 1 of ER, UNT 2 of ER, UNT 3 of ER and UNT 4 of ER on the drawing titled *Runway 5 Safety Area and Slope Mitigation Areas Reviewed for the Presence of Jurisdictional Waters* and dated June 17, 2015 because these areas were located outside of the area of interest. This letter contains an approved JD specifically for the non-jurisdictional features noted above. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR 331.

Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Great Lakes and Ohio River Division Office at the following address:

Appeals Review Officer  
Great Lakes and Ohio River Division  
550 Main Street RM 10524  
Cincinnati, Ohio 45202-3222  
Phone: (513) 684-2699  
Fax: (513) 684-2460


In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by July 28, 2015. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

***No Permit Required***

Based upon the provided information and a pre-application meeting conducted on June 18, 2015, you propose to perform remedial measures to stabilize a slip area adjacent to Runway Safety Area 5. Unconsolidated fill material in the slip area will be excavated and deposited in areas absent of waters of the United States. In addition, a channel will be constructed through uplands. We have determined your proposal will neither result in discharge of dredged or fill material into waters of the United States nor involve work in, on, over or under a navigable water of the United States. Therefore, no DA permit is required from this office for the proposed activities.

We appreciate your concern for our nation's aquatic resources. If you have any questions concerning the above information, please contact Ms. Teresa Spagna of the North Branch at 304-399-5710, at the above address or by email at [teresa.d.spagna@usace.army.mil](mailto:teresa.d.spagna@usace.army.mil).

Sincerely,

  
Ginger Mullins, Chief  
Regulatory Division

Enclosures

-3-

Copy Furnished:

Mr. Lantz Rankin  
Heritage Technical Associates, Inc.  
Post Office Box 4510  
Chapmanville, West Virginia 25508

**Central West Virginia Regional Airport Authority**

John D. Rockefeller IV Terminal  
100 Airport Road, Suite 175 • Charleston, WV 25311-1080  
Phone: 304-344-8033 Fax: 304-344-8034  
E-Mail: fly@yeagerairport.com www.yeagerairport.com



**June 24, 2015**

**Mr. Scott Mandirola, Director**  
Division of Water and Waste Management  
West Virginia Department of Environment Protection  
601 57th Street SE  
Charleston, WV 25304

**RE: Emergency Related Construction at the Yeager Airport**

**Dear Mr. Mandirola:**

Central West Virginia Regional Airport Authority ("CWVRAA") is seeking to initiate emergency measures in order to remove unstable debris and provide an engineered flow path for Elk Two Mile Creek in the event that field conditions cause the current channel to not function adequately. In order to timely initiate these measures, CWVRAA is requesting immediate authorization for construction activities needed to respond to this public emergency.

In March of 2015, at Yeager Airport in Charleston, West Virginia, a large portion of an engineered fill, associated with the Runway 23 Engineered Materials Arrestor System, slid into Elk Two Mile Creek. The fill material blocked Elk Two Mile Creek causing local flooding. Currently, for safety reasons, CWVRAA needs to timely begin to perform remediation actions regarding unconsolidated fill material that remains within the fill area and the current channel of Elk Two Mile Creek. Although several months have passed since the initial failure of the fill, the remaining unstable fill material and the potential for the current channel of Elk Two Mile Creek to be filled require immediate remediation action. In the time since the initial failure, CWVRAA has selected the companies which will be designing and constructing the said remediation. The complexity of the situation requires that the remediation alternatives be closely analyzed in order to choose the most efficient and safest alternative.

Once the design of the remediation project is finalized, said remediation construction will need to be implemented in a timely manner. In order to allow the

WEST VIRGINIA'S GATEWAY

**EXHIBIT C**

remediation to occur without administrative delay, CWVRAA is requesting immediate authorization to conduct the necessary earth disturbance activities. In accordance with the eligibility for emergency related construction policy, located in Section 11.1 of the Fact Sheet, Rationale, and Information for General; NPDES Permit for Construction Stormwater, WV0115924 issued on December 5, 2012, CWVRAA is requesting immediate authorization for construction activities needed to respond to this public emergency. Within thirty (30) calendar days after commencing earth-disturbance activities, a Notice of Intent and a stormwater pollution prevention plan will be submitted to West Virginia Department of Environmental Protection. If you have any further questions, please contact me at 304-344-8033 or email me at [rick@yeagerairport.com](mailto:rick@yeagerairport.com).

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard Atkinson III", is written over a horizontal line.

**Richard Atkinson III**  
*Director, Yeager Airport*

c: Mr. Lantz Rankin



YEAGER AIRPORT  
SLOPE MONITORING  
RUNWAY 5

**FORENSIC EVALUATION PROGRAM – PHASE 1**

DATE: 6/22/15

**Project Name:** Yeager International Airport – Runway 5  
**Project Location:** Charleston, West Virginia  
**Subject:** Runway 5 - Reinforced Soil Slope Slide – Phase 1 Stabilization – Proposed Forensic Sampling and Testing Program

The following proposed forensic evaluation program has been developed specifically with respect to only the phase 1 slide stabilization measures developed by Schnabel Engineering Consultants. A second phase of the forensic evaluation program will be developed and implemented after the head scarp has been stabilized and safe access to the failed mass debris field is provided. This proposed program is subject to review and comment by parties named in the litigation.

**EMAS**

- Preserve 4 intact 20 inch thick EMAS blocks for future possible testing.
- The EMAS blocks will be stored on site at an agreed upon location by the Airport Authority.

**Asphalt Pavement**

- Survey, map and photograph tension cracks in asphalt pavement below EMAS. Measure thickness of asphalt at crack locations.

**Base Course Material**

- Obtain bulk samples (2 – 5 gallon buckets) of base coarse aggregate underneath the asphalt pavement, at two locations, one each on the east and west sides of the centerline of the EMAS.
- Perform gradation tests in accordance with ASTM D6913 Standard Test Methods for Particle-Size Distribution (Gradation) of Soils Using Sieve Analysis.

**Reinforced and Retained Fill**

- Sample frequency – approximately every 12 feet vertically (4 x 3-foot reinforcement spacing) and in both the sandstone based fill and in the shale based fill. Take additional samples at any observed fill anomalies.
- Sample location – one each on the east and west sides of the EMAS centerline. Record location of each sample.

BY: JGC

Sheet 1 of 4

**INNOVATIVE GEOTECHNICAL SOLUTIONS**  
7445 Arlington Road  
Bethesda, MD 20184



***EXHIBIT D***

YEAGER AIRPORT  
SLOPE MONITORING  
RUNWAY 5

**FORENSIC EVALUATION PROGRAM – PHASE 1**

DATE: 6/22/15

- Sample size – three 5 gallon buckets at each location, if sandstone and clay/shale are both present (below and above reinforcement layer) collect 3 bucket samples of each. Do not include material over ¾-Inch size, screen on site as necessary. Document, weigh, and photograph oversize material from each location. Samples shall be field described during sampling. Blending of material in the sample buckets will be required before testing.
- Perform the following tests:
  - Gradation tests (ASTM D6913)
  - Atterberg Limits (D4318 - 10e1 Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils)
  - Proctor Density tests (ASTM D698 Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort)
  - Triaxial Compression tests (D4767 Standard Test Method for Consolidated Undrained Triaxial Compression Test for Cohesive Soils)
  - Residual Shear strength testing using sufficient stress reversals to obtain large strains as discussed in the COE laboratory testing procedure EM 1110-2-1906
  - One-dimensional consolidation tests (ASTM D2435 Standard Test Methods for One-Dimensional Consolidation Properties of Soils Using Incremental Loading)
  - Permeability tests (ASTM D2434-68 Standard Test Method for Permeability of Granular Soils).
- The frequency of the above listed tests will be a function of the variability of the soil samples obtained during the sampling process and variability of early test results, as a minimum at least three of each test will be performed.
- In-situ density testing – perform sand cone density testing and/or Nuclear Density Testing every 6 feet vertically at three locations during the excavation (D1556 - 15 Standard Test Method for Density and Unit Weight of Soil in Place by Sand-Cone Method and ASTM D6938 - 10 Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth)). The test method will be dependent on the amount of large particles in the fill. Excavation at the test level shall be performed with a smooth bucket blade to minimize disturbance of the In-situ soil. Use hand shovel to excavate the last 3 inches to the test elevation.

BY: JGC

Sheet 2 of 4

INNOVATIVE GEOTECHNICAL SOLUTIONS  
7445 Arlington Road  
Bethesda, MD 20184



YEAGER AIRPORT  
SLOPE MONITORING  
RUNWAY 5

**FORENSIC EVALUATION PROGRAM – PHASE 1**

DATE: 6/22/15

- In-situ moisture – obtain samples for moisture testing at each density test location and wherever there are obvious wet areas (ASTM D2216 - 10 Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass).
- In-situ Large Scale Density Testing. Frequency – one test in per 12 foot vertically. Dimensions – 2-foot diameter ring and two lift heights thickness in sandstone based fill and one lift height thickness in the shale based fill. Perform in-situ water replacement volume measurement. Gradation test and weight measurement of all samples.

**Geogrid Retrieval for Testing**

- Geogrid sampling frequency – every 12 feet vertically. Sample at two locations at each elevation, one in side fill with 10XT geogrid reinforcement and one in front fill with 20XT geogrid reinforcement.
- At the terminal end of the geogrid expose an area of grid that is a roll width (12 feet) wide and a minimum of 10 feet long for observation and sampling. The excavation to expose the geogrid shall be made with a smooth bucket edge to within 2 inches (or greater) above the geogrid. The final 2 inches shall be excavated by hand, to minimize damaging the geogrid.
- Photographic documentation of the condition of the geogrid shall be performed
- Two 6 feet wide by 10 feet long samples of the geogrid shall be obtained at each exposed location, if Miragrid 10XT and 20XT are both exposed at any location samples of each shall be obtained
- Perform wide width tensile testing (5 at each sample location) in accordance with ASTM D6637 Standard Test Method for Determining Tensile Properties of Geogrids by the Single or Multi-Rib Tensile Method, Method B.

**Geogrid Observations and Additional Sample Retrieval**

- At the terminal end of the geogrid expose an area of grid that is approximately 20 feet wide and 30 feet long, or greater, for observation and sampling. The excavation to expose the geogrid shall be made with a smooth bucket edge. Geogrid overlap observation frequency – every 12 feet vertically.
- Photographic documentation of the condition and overlap of the geogrid shall be performed.
- Overlap geometry and dimensions shall be measured and recorded.

BY: JGC

Sheet 3 of 4

**INNOVATIVE GEOTECHNICAL SOLUTIONS**  
7445 Arlington Road  
Bethesda, MD 20184



YEAGER AIRPORT  
SLOPE MONITORING  
RUNWAY 5

**FORENSIC EVALUATION PROGRAM – PHASE 1**

DATE: 6/22/15

- Once the scarp has been lowered to a safe height, excavate to expose the geogrid at the face using a smooth bucket edge (frequency of 3 to 6 feet vertically). Expose width of geogrid of 8 feet. Tear geometry, in relation to machine direction (MD) and cross machine direction (XMD), will be photographed and recorded. Observe at two locations at each elevation, one in side fill with 10XT geogrid reinforcement and one in front fill with 20XT geogrid reinforcement.
- Additionally, once the scarp has been removed and it is safe to work in the debris field, large panels (minimum 6 feet in length) of geogrid that are exposed and readily removable will be mapped, then the exposed panels will be removed, tagged, and stored for possible future testing.

**Photographic Documentation and Mapping**

- During the phase 1 stabilization of the head scarp the following photographic documentation and mapping shall be performed:
  - Where rock surface is exposed document elevation and extent (3D mapping), type and condition rock, bedding plane geometry, etc.
  - Location and elevation of 1969 Airport Extension fill
  - Any wet areas exposed during the excavation
  - Reinforced and retained backfill demarcation.
  - Document preparation (ex., stripping, benching, etc.) at the interface between the old existing fill and new (retained backfill).

BY: JGC

Sheet 4 of 4

**INNOVATIVE GEOTECHNICAL SOLUTIONS**

7445 Arlington Road  
Bethesda, MD 20184





IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022  
Judge Webster

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,

LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
a Pennsylvania corporation,  
AIG AEROSPACE INSURANCE SERVICES, INC.,  
a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURNACE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

### **CERTIFICATE OF SERVICE**

On June 24, 2015, the undersigned counsel does hereby certify that service of the attached **EMERGENCY MOTION TO PRESERVE REAL EVIDENCE** has been made upon named Defendants by service through the West Virginia of Secretary of State with the Complaint and Amended Complaint.

\_\_\_\_\_  
Anthony J. Majestro (WVSB 5165)  
J.C. Powell (WVSB 2957)  
Powell and Majestro, PLLC  
405 Capitol Street, Suite P-1200  
Charleston, West Virginia 25301  
Phone: 304-346-2889  
Fax: 304-346-2895  
amajestro@powellmajestro.com

Office of the Secretary of State  
Building 1 Suite 157-K  
1900 Kanawha Blvd E.  
Charleston, WV 25305

FILED  
2015 JUL -6 AM 10:56  
CATHY S. B. CULLER  
KANAWHA COUNTY CIRCUIT COURT



**Natalie E. Tennant**  
Secretary Of State  
State Of West Virginia  
Phone: 304-558-6000  
866-767-8683  
Visit us online:  
[www.wvsos.com](http://www.wvsos.com)

Cathy Gatson  
Kanawha County Courthouse  
111 Court Street  
Charleston, WV 25301-2500

**Control Number:** 66230

**Defendant:** WEST VIRGINIA PAVING, INC.  
209 West Washington Street  
Charleston, WV 25302 US

**Agent:** Corporation Service Company

**County:** Kanawha

**Civil Action:** 15-C-1022

**Certified Number:** 92148901125134100000711275

**Service Date:** 6/30/2015

I am enclosing:

**1 summons and amended complaint**

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

*Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.*

Sincerely,

A handwritten signature in cursive script that reads "Natalie E. Tennant".

Natalie E. Tennant  
Secretary of State

Handwritten initials "18-19" in a stylized, cursive script.

FILED

**SUMMONS**  
**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

2015 JUL 5 AM 10:56  
CATHY S. DAVIS, CLERK  
KANAWHA COUNTY CIRCUIT COURT

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-1022

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia Corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware Corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware Corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,

HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,  
LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
A Pennsylvania corporation,  
AIG AEROSPANCE INSURANCE SERVICES, INC.,  
A Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
An Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
A Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURNACE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANY 4-20,  
And JOHN DOES NOS 1 THROUGH 20,  
Defendants.

**To the above-named Defendant: West Virginia Paving, Inc.  
Corporation Service Company  
209 West Washington Street  
Charleston, WV 25302**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Bucci Bailey & Javins, L.C., plaintiff's attorney, whose address is Post Office Box 3712, Charleston, West Virginia, 25337, an answer, including any related counterclaim you may have, to the amended complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the



complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 10-18-15

Cathy S. Gatson, Clerk  
Clerk of the Court

By Cheryl

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CENTRAL WEST VIRGINIA REGIONAL  
AIRPORT AUTHORITY, INC.,  
a West Virginia corporation,

Plaintiff,

FILED  
2015 JUN 18 AM 11:21  
CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

v.

Civil Action No. 15-C-1022  
Judge Kaufman

TRIAD ENGINEERING, INC.,  
a West Virginia corporation;  
CAST & BAKER CORPORATION,  
a Pennsylvania corporation;  
MICHAEL BAKER INTERNATIONAL, INC.  
a/k/a MICHAEL BAKER CORPORATION,  
A Delaware corporation  
WEST VIRGINIA PAVING, INC.,  
a West Virginia corporation;  
SENEX EXPLOSIVES INC.,  
a Pennsylvania corporation;  
AFFORDABLE ASPHALT MAINTENANCE  
CORPORATION,  
a West Virginia corporation;  
ENGINEERED ARRESTING SYSTEMS  
CORPORATION, d/b/a ZODIAC  
ARRESTING SYSTEMS AMERICA,  
a Delaware corporation;  
ROYAL TEN CATE (USA), INC.,  
a Delaware corporation;  
NOVEL GEO – ENVIRONMENTAL, LLC,  
A Pennsylvania corporation  
JMD COMPANY, INC.  
A Delaware corporation.  
ARCHITECTS & ENGINEERS INSURANCE  
COMPANY,  
A Delaware corporation,  
ERIE INSURANCE GROUP,  
A Pennsylvania corporation,  
GREAT AMERICAN INSURANCE COMPANY,  
An Ohio corporation,  
HDI-GERLING AMERICA INSURANCE COMPANY,  
A Illinois corporation,

LANCER INSURANCE COMPANY,  
A Delaware corporation,  
LIBERTY MUTUAL INSURANCE COMPANY,  
A Massachusetts corporation,  
OHIO FARMERS INSURANCE COMPANY,  
An Ohio corporation,  
WESTFIELD INSURANCE COMPANY,  
An Ohio corporation,  
XL INSURANCE AMERICA, INC.,  
A Delaware corporation,  
NEW HAMPSHIRE INSURANCE COMPANY,  
a Pennsylvania corporation,  
AIG AEROSPACE INSURANCE SERVICES, INC.,  
a Georgia corporation,  
CINCINNATI INSURANCE COMPANY,  
an Ohio corporation,  
TRAVELERS INDEMNITY COMPANY,  
a Connecticut corporation,  
ACE AMERICAN INSURANCE COMPANY,  
A Pennsylvania corporation,  
JOHN DOE INSURANCE COMPANY 1,  
JOHN DOE INSURANCE COMPANY 2,  
JOHN DOE INSURANCE COMPANY 3,  
JOHN DOE INSURANCE COMPANIES 4-20,  
and JOHN DOES NOS 1 THROUGH 20,

Defendants.

**AMENDED COMPLAINT**

The plaintiff, Central West Virginia Regional Airport Authority, Inc., for its complaint,  
hereby alleges as follows:

**PARTIES**

1. Plaintiff Central West Virginia Regional Airport Authority, Inc., (“the Authority”) is a political subdivision of the State of West Virginia, governed by a board comprised of representatives of Kanawha, Putnam, Lincoln, Boone, and Nicholas Counties, and the City of Charleston. At all relevant times, plaintiff Authority owned and operated Yeager Airport in Charleston, Kanawha County, West Virginia.

2. Defendant Triad Engineering, Inc. ("Triad") is a West Virginia corporation. Upon information and belief, its principal place of business is now in Pittsburgh, Pennsylvania. At all relevant times, Defendant Triad has been licensed to conduct and has been conducting business in the State of West Virginia. Triad provided design, engineering, supervision, inspection, monitoring, and advice with regard to the subject project discussed herein. Additionally, after completion of the subject project, defendant Triad continued to provide such services.

3. Defendant Cast & Baker Corporation ("Cast") is a Pennsylvania Corporation with its principal place of business in Cannonsburg, Pennsylvania. At all relevant times, Defendant Cast has been licensed to conduct and has been conducting business in the State of West Virginia, and was the general contractor on the subject project. Cast provided design, engineering, supervision, inspection, monitoring, advice, construction work and other construction related services on the subject project. Additionally, after completion of the project, defendant Cast continued to provide such services.

4. Defendant Michael Baker International, Inc., a/k/a Michael Baker Corporation ("Michael Baker") is a Delaware Corporation. Michael Baker designed and inspected the RSA and MSE system as described herein.

5. Defendant West Virginia Paving, Inc. ("WV Paving") is a West Virginia corporation. Upon information and belief, its principal place of business is in Dunbar, Kanawha County, West Virginia. At all relevant times, Defendant WV Paving has been licensed to conduct and has been conducting business in the State of West Virginia. WV Paving provided paving services and products upon which an EMAS system, discussed herein, was installed on the subject project.

6. Defendant Senex Explosives, Inc. (“Senex”) is a Pennsylvania corporation. At all relevant times, Defendant Senex has been licensed to conduct and has been conducting business in the State of West Virginia. Senex provided explosives and blasting services on the subject project.

7. Defendant Affordable Asphalt Maintenance Corporation (“Affordable Asphalt”) is a West Virginia corporation. Upon information and belief, its principal place of business is in Mineral Wells, Wood County, West Virginia. At all relevant times, Defendant Affordable Asphalt has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant Affordable Asphalt installed the subject EMAS system discussed herein.

8. Defendant Engineered Arresting Systems Corporation (“Engineered Arresting”) is a Delaware corporation. At all relevant times, Defendant Engineering Arresting has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant Engineering Arresting designed, sold, distributed and/or manufactured the EMAS system described herein and provided advice and expertise in the selection and installation of the EMAS system.

9. Defendant Royal Ten Cate (USA), Inc. (“Royal Ten”) is a Delaware corporation. At all relevant times, Defendant Royal Ten has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant was the manufacturer and/or distributor of the geosynthetic materials utilized on the subject project including the Miramesh GR, and the Miragrid 10XT & 20XT.

10. Defendant Novel Geo-Environmental, LLC (“Novel”) is a Pennsylvania corporation. At all relevant times, Defendant Novel has been licensed to conduct and has been



conducting business in the State of West Virginia. Defendant Novel provided quality-control services including geotechnical compaction testing and/or analysis for the subject project.

11. Defendant JMD Company, Inc., (“JMD”) is a Delaware corporation. At all relevant times, Defendant JMD has been licensed to conduct and has been conducting business in the State of West Virginia. Defendant JMD distributed and/or modified the geosynthetic materials utilized on the subject product including the Miramesh GR and Miragrid 10XT & 20XT, and further provided advice and expertise in the selection and installation of the subject products.

12. Defendant Architects & Engineers Insurance Company (“Architects”) is a Delaware corporation. At all relevant times, Defendant Architects has been licensed to conduct and has been conducting business in the State of West Virginia.

13. Defendant Erie Insurance Group (“Erie”) is a Pennsylvania corporation. At all relevant times, Defendant Erie has been licensed to conduct and has been conducting business in the State of West Virginia.

14. Defendant Great American Insurance Company (“Great American”) is an Ohio corporation. At all relevant times, Defendant Great American has been licensed to conduct and has been conducting business in the State of West Virginia.

15. Defendant, Lancer Insurance Company (“Lancer”) is a Delaware corporation. At all relevant times, Defendant Lancer has been licensed to conduct and has been conducting business in the State of West Virginia.

16. Defendant, HDI-Gerling America Insurance Company (“HDI-Gerling”) is a Illinois corporation. At all relevant times, Defendant HDI-Gerling has been licensed to conduct and has been conducting business in the State of West Virginia.

17. Defendant Liberty Mutual Insurance Company (“Liberty”) is a Massachusetts corporation. At all relevant times, Defendant Liberty has been licensed to conduct and has been conducting business in the State of West Virginia.

18. Defendant Ohio Farmers Insurance Company (“Ohio”) is an Ohio corporation. At all relevant times, Defendant Ohio has been licensed to conduct and has been conducting business in the State of West Virginia.

19. Defendant Westfield Insurance Company (“Westfield”) is an Ohio corporation. At all relevant times, Defendant Westfield has been licensed to conduct and has been conducting business in the State of West Virginia.

20. Defendant, XL Insurance America, Inc. (“XL”) is an Delaware corporation. At all relevant times, Defendant XL has been licensed to conduct and has been conducting business in the State of West Virginia.

21. Defendant, New Hampshire Insurance Company (“New Hampshire”) is a Pennsylvania corporation. At all relevant times, Defendant New Hampshire has been licensed to conduct and has been conducting business in the State of West Virginia.

22. Defendant, AIG Aerospace Insurance Services, Inc. (“AIG Aerospace”) is a Georgia corporation. At all relevant times, Defendant AIG Aerospace has been licensed to conduct and has been conducting business in the State of West Virginia.

23. Defendant, Cincinnati Insurance Company (“Cincinnati”) is an Ohio corporation. At all relevant times, Defendant Cincinnati has been licensed to conduct and has been conducting business in the State of West Virginia.

24. Defendant, Travelers Indemnity Company (“Travelers”) is a Connecticut corporation. At all relevant times, Defendant Travelers has been licensed to conduct and has been conducting business in the State of West Virginia.

25. Defendant ACE American Insurance Company (“ACE”) is a Pennsylvania corporation. At all relevant times, Defendant ACE has been licensed to conduct and has been conducting business in the State of West Virginia.

26. Defendants John Doe Insurance Companies Nos. 1 through 20 are potentially unknown insurance companies or other entities.

27. Defendants John Doe Nos. 1 through 20 are potentially unknown defendants in this action who will be discovered during the course of discovery.

#### **JURISDICTION AND VENUE**

28. That at all times mentioned herein, the Defendants Triad, Cast, Michael Baker, WV Paving, Senex, Affordable Asphalt, Engineered Arresting, Royal Ten, Novel, Architects, Erie, Great American, HDI-Gerling, Lancer, Liberty, Ohio Farmers, Westfield, XL, New Hampshire and AIG Aerospace are now and/or were corporations doing business in Kanawha County, West Virginia.

29. Jurisdiction and venue are appropriate in the Circuit Court of Kanawha County, West Virginia, pursuant to W. Va. Code § 56-1-1, in that the events giving rise to this cause of action occurred in Kanawha County, West Virginia; one or more defendant does business in West Virginia; and plaintiff avails itself of the Circuit Court of Kanawha County, West Virginia, pursuant to the principles set forth in W. Va. Code §56-1-1 and W. Va. Code §56-1-1a.

30. The claims raised herein are claims under West Virginia law and do not concern any federal law or federal constitutional provision.

## FACTS

31. The plaintiff realleges and incorporates by reference Paragraphs 1 through 30.

32. Yeager Airport sits on a man-made plateau that was constructed in the 1940s by removing portions of the ridge and hilltops. In the original grading process, more than 9 million cubic yards of earth and rock were moved with the aid of more than 2 million pounds of explosives.

33. In and around 2003, the Authority decided to provide a Runway Safety Area (RSA) for its runways, including Runway 5-23. Runway 5-23 is the runway that is the subject of this action.

34. It was determined that the best manner in which to provide the RSA for Runway 5-23 was a 500 foot extension of the runway's southernmost end and the use of an engineered material arresting system (EMAS). An EMAS system is a system of specialized air-entrained cement blocks at the end of a runway onto which an airplane can travel in an emergency. These blocks are meant to collapse under the weight of the airplane thereby stopping or arresting the airplane's progress and preventing a crash.

35. Because of Yeager Airport's location on top of a ridge, extending the runway was not possible without dramatically altering the natural grade of the land.

36. The Runway 5-23 Extension project involved disturbing at least 42.5 acres of vegetated and forested land, including at least 13.75 acres of clear-cutting. Fill and other materials would have to be brought in to construct a mechanically stabilized earth structure (MSE) or manmade slope so the extension could be built at the same elevation as the existing runway. The plan called for the movement of approximately 750,000 cubic yards of earth. At

the time, this would be the largest MSE ever designed and constructed. The total cost for the extensions to both runways was in excess of thirty million dollars.

37. Through a bidding procedure, and based upon certain representations and the amount of Defendant Triad's bid, the Authority contracted with Defendant Triad for the design and engineering work for the runway extension project including, but not limited to, the design and engineering of the MSE. The Authority contracted with Defendant Cast to serve as the contractor for the construction work including, but not limited to, the construction of the MSE. Other named defendants herein provided services and products in conjunction with those contracts.

38. Work started on the Runway 5-23 RSA and the MSE on May 31, 2005. The RSA and the MSE was completed in June of 2007 with the installation of the EMAS blocks.

39. Pursuant to FAA regulations, the EMAS blocks and the runway extension were continually inspected and monitored by the Authority after completion.

40. On July 28, 2013, employees of the Authority were preparing to paint the EMAS blocks with the required coating and noticed separation in and around the EMAS blocks which was not present the week before.

41. The Authority immediately contacted defendants Triad and Cast and informed defendants of this development.

42. Defendants Triad and Cast inspected the EMAS and MSE area and defendants Triad and Cast informed the Authority they did not think there was a problem with the EMAS system nor the MSE on which it was placed. Defendant Triad instructed the Authority to monitor the area through surveys. In fact, defendant Triad informed the Authority that settlement of as much as 24" was within normal range. As instructed, the Authority had surveys